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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.
Petitioner

versus

HENRY CASSELLI, JR.
Respondent

Petition for Writ of Certiorari
from an Order of the 24th Judicial District
Court for the Parish of Jefferson, rendered on
November 7, 1997, docket number 450-346,
The Honorable Walter J. Rothschild, Judge

PETITION FOR WRIT OF CERTIORARI

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6 APP

QUESTIONS PRESENTED FOR REVIEW

May a trial court strip a parent of the custody of a minor child, even on an interim basis, without a hearing or an opportunity to cross-examine an expert upon whose written recommendations the trial court solely relied in issuing its order?

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STATEMENT OF THE BASIS FOR JURISDICTION

MAY IT PLEASE THE COURT:

Petitioner, DONNA MADDEN CASSELLI, brings this Petition for Writ of Certiorari to review the Decision of the 24th Judicial District Court for the State of Louisiana of November 7, 1997. An application for a Stay Order and Writs of Review, Certiorari, and Mandamus was denied by the Louisiana Fifth Circuit Court of Appeal on December 16, 1997, after deliberations lasting one month. An application for a Stay Order and Writs of Review, Certiorari, and Mandamus was denied by the Louisiana Supreme Court on February 6, 1998, after deliberations lasting three weeks. A final Request for a Stay Order, pending the timely filing and disposition of this Petition for a Writ of Certiorari, was denied by the Louisiana 24th Judicial District Court on February 9, 1998. The jurisdiction of this Honorable Court rests in 28 U.S.C. Section 1257.

STATEMENT OF STATUTES INVOLVED

U.S. Const. Amend. XIV, § 1 - Due Process of Law

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . "

La. Civ. Code Art. 132 - Award of Custody to Parents

[First Paragraph of Article Omitted]

In the absence of agreement, or if the agreement is not in the best interest of the child, the court shall award custody to the parents jointly; however, if custody in one parent is shown by clear and convincing evidence to serve the best interest of the child, the court shall award custody to that parent.

La. Rev. Stat. § 9:331 - Custody or Visitation Proceeding; Evaluation by Mental Health Professional

A. The Court may order an evaluation of a party or the child in a custody or visitation proceeding for good cause shown. [Remainder of Paragraph Omitted]

B. The court may order a party or the child to submit to and cooperate in the evaluation, testing, or interview by the mental health professional. The mental health professional shall provide the court and the parties with a written report. The mental health professional shall serve as a witness of the court, subject to cross-examination by a party.

La. Code Civ. Proc. Art. 963 - Ex Parte and Contradictory Motions; Rule to Show Cause

[First Paragraph of Article Omitted]

If the order applied for by written motion is one to which the mover is not clearly entitled, or which requires supporting proof, the motion shall be served on and tried contradictorily with the adverse party.

La. Code Civ. Proc. 3945 - Incidental Order of Temporary Child Custody

A. The injunctive relief afforded either party to an action for divorce or other proceeding which includes a provision for the temporary custody of a minor child shall be governed by the additional provisions of this Article.

B. An ex parte order of temporary custody of a minor child shall not be granted unless:

(1) It clearly appears from specific facts shown by a verified petition or supporting affidavit that immediate and irreparable injury will result to the child before the adverse party or his attorney can be heard in opposition.

(2) The applicant's attorney certifies to the court, in writing, either:

(a) The efforts which have been made to give the adverse party reasonable notice of the date and time such order is being presented to the court.

(b) The reasons supporting his claim that notice should not be required.

C. An ex parte order of temporary custody shall:

(1) Expire by operation of law within fifteen days of signing of the order; however, the order may be extended for good cause shown at any time before its expiration for one period not exceeding ten days.

(2) Provide specific provisions for temporary visitation by the adverse party of not less than forty-eight hours during the fifteen-day period, unless the verified petition or supporting affidavit clearly demonstrates that immediate and irreparable injury will result to the child as a result of such visitation.

(3) Be endorsed with the date on which the ex parte order is signed and the date and hour of the rule to show cause.

D. The rule to show cause why the respondent should not be awarded the custody, joint custody, or visitation of the child shall be assigned for hearing not more than fifteen days after signing of the ex parte order of temporary custody.

E. Any ex parte order not in compliance with the provisions of this Article is not enforceable, and is null and void.

[Last Two Paragraphs of Article Omitted]

STATEMENT OF THE CASE

Henry Casselli, Jr. (hereinafter referred to as "Mr. Casselli") and Donna Madden Casselli (hereinafter referred to as "Ms. Casselli") were married on June 5, 1971. They were divorced on February 18, 1994, and on that date, entered into a Consent Judgment whereby they agreed to joint custody of their minor child, Marin Casselli (hereinafter referred to as "Marin"), with Ms. Casselli designated as the domiciliary parent. [Appendix A, Consent Judgment]. At the time this Consent Judgment was entered, Marin was thirteen years old. Marin is presently sixteen years old.

On November 22, 1996, Mr. Casselli filed a Rule to Show Cause and for Contempt wherein he requested that he be awarded approximately equal time sharing with Marin. [Appendix B, Rule to Show Cause and for Contempt].

Near Thanksgiving, 1996, as a result of an allergic reaction to prescribed medication and suffering from sleep deprivation, Ms. Casselli became manic, hysterical, and irrational, alleging that Mr. Casselli had sexually abused Marin. As a result of this unfortunate situation, and based upon the consent of both parties, the Trial Court issued an Interim Order on December 12, 1996, whereby Mr. Casselli was awarded temporary physical custody of Marin. [Appendix C, Interim Order of December 13, 1996]. This

Interim Order changed Marin's physical custody, not her legal custody.

In accordance with this Interim Order, Ms. Casselli was awarded physical custody of Marin on alternating weeks from Thursday afternoon through Monday morning. For the Summer of 1997, Ms. Casselli was awarded equal physical custody of Marin and in fact enjoyed the physical custody of Marin for the majority of the Summer. Then without justification, in August of 1997, Ms. Casselli's physical custody of Marin reverted back to the alternating week schedule of Thursday afternoon through Monday morning. However, Marin continues at her insistence to spend additional time in her mothers physical custody.

Six weeks after the events of Thanksgiving 1996, and two weeks after the Interim Order of December of 1996, on January 6, 1997, Mr. Casselli filed a Rule to Show Cause and a Supplemental and Amending Rule to Show Cause and for Contempt wherein he requested that a mental health professional be appointed by the Trial Court to conduct an evaluation of Ms. Casselli and that he be granted sole custody of Marin. [Appendix D, Rule to Show Cause (for appointment of mental health professional); Appendix E, Supplemental and Amending Rule to Show Cause and for Contempt (requesting sole custody)]. Ms. Casselli agreed to the appointment of a mental health professional and the Trial

Court appointed William Bradford Janzen, Ph.D. (hereinafter referred to as "Dr. Janzen") to conduct an evaluation of both parties and Marin.

The trial of Mr. Casselli's rules was scheduled for April 7, 1997. However, as a result of the late appointment of Dr. Janzen, his evaluation was not complete in time for the April 7, 1997 trial date and the parties agreed to continue the trial until October 8, 9, and 10, 1997, to allow ample time for Dr. Janzen to complete his evaluation and for the parties to complete their discovery.

In late September of 1997, it became clear to both parties that Dr. Janzen's report would not be received in enough time for them to prepare for the trial scheduled in October of 1997. Accordingly, both parties agreed that the trial would be continued again but that a status conference would be held on October 8, 1997. On or about September 29, 1997, Dr. Janzen faxed a copy of his report to both parties. Among other things, Dr. Janzen recommended that Mr. Casselli be awarded the sole custody of Marin.

On October 8, 1997, on oral motion of Mr. Casselli (in judge's chambers) and over the objections of Ms. Casselli, and after specifically denying her the right to a hearing, to present evidence, and to cross-examine Dr. Janzen, the Trial Court advised that it would adopt the recommendations of Dr. Janzen as an Interim Order pending the trial which is

presently scheduled for April 22, 23, and 24, 1998. [Appendix F, Interim Order of November 7, 1997]. There is no provision in Louisiana law for such an order absent a showing of immediate and irreparable harm to the minor child. Not only has Mr. Casselli made no such showing, he has made no such allegations.

On October 27, 1997, Ms. Casselli filed her Notice of Intention to Apply for Writs of Review, Certiorari, and Mandamus with the Trial Court. [Appendix G, Notice of Intention to Apply for Writs of Review, Certiorari, and Mandamus]. On November 12, 1997, a Stay Order and Writs of Review, Certiorari, and Mandamus was filed with the Louisiana Fifth Circuit Court of Appeal and on December 16, 1997, the Fifth Circuit Court of Appeal denied Ms. Casselli's Application for a Stay Order and Writs of Review, Certiorari, and Mandamus. [Appendix H, Louisiana Fifth Circuit Court of Appeal Writ Application Denial].

After deliberations lasting one month, the Louisiana Fifth Circuit Court of Appeal opined that "matters of this type should be heard as expeditiously as possible;" however, Ms. Casselli's complaint is not that the trial on the merits of the issue of Marin's custody was five months away, but rather that the Trial Court divested her of the joint custody of Marin without a hearing or an opportunity to cross-examine the expert upon whose written recommendation the Trial Court

solely relied in issuing its order. [Appendix H].

Further, despite the fact that no hearing was held and no testimony or evidence was offered, the Louisiana Fifth Circuit Court of Appeal cited "the volatile background of the case" to find that the Trial Court did not err in issuing its order. [Appendix H]. The only volatile event in this case occurred near Thanksgiving, 1996. There was no volatility in this case prior to that event nor has there been any volatility since.

A Stay Order and Writs of Review, Certiorari, and Mandamus was filed with the Louisiana Supreme Court on January 16, 1998, and on February 6, 1998, after deliberating for three weeks, the Louisiana Supreme Court denied Ms. Casselli's Application for a Stay Order and Writs of Review, Certiorari, and Mandamus. [Appendix I, Louisiana Supreme Court Writ Application Denial]. On February 9, 1998, the Trial Court denied a final request for a Stay Order pending the timely filing and disposition of the instant Petition for Writ of Certiorari with this Honorable Court. [Appendix J].

ARGUMENT

One of the most fundamental rights that can be adjudicated in a court of law is the right inherent in a parent's relationship with his or her child.[1] Unfortunately, in this case, a mother has lost the joint custody of her daughter without so much as a hearing or the ability to cross-examine an expert upon whose written recommendation the Trial Court solely relied. On November 7, 1997, by order of the Trial Court, Ms. Casselli was stripped of the joint custody of her daughter upon an oral motion and without a hearing or an opportunity to cross-examine the mental health professional upon whose recommendations the Trial Court solely relied in issuing its order.

I. THE TRIAL COURT VIOLATED MS. CASSELLI'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW BY STRIPPING HER OF A FUNDAMENTAL RIGHT WITHOUT ADEQUATE DUE PROCESS PROTECTIONS

In stripping Ms. Casselli of the joint custody of her daughter without a hearing, the Trial Court has deprived Ms. Casselli of a fundamental right without the minimum protections required for even minor deprivations of life, liberty, or property. Although careful research suggests that this Hon-

1. Quoted from Brief for Petitioner at 8 (1996 WL 291022), M.L.B. v. S.L.J., 117 S.Ct. 555, 136 L.Ed. 473 (1996) (95-853).

orable Supreme Court has never been presented with a case where a mother has been stripped of the custody of her minor child without a hearing, this Court has established standards for determining when and to what extent a hearing is required before a person may be deprived of a liberty interest, and it has defined a parent's relationship with his or her child as a fundamental right. Under the standards established by this Honorable Court, the Trial Court has violated Ms. Casselli's Constitutional right to due process of law by stripping her of the custody of her daughter without a hearing or an opportunity to cross-examine the mental health professional upon whose recommendations the Trial Court solely relied in issuing its order and, as a result, this Honorable Supreme Court should rescind, vacate, and annul the order of the Trial Court.

A. Even minor deprivations of life, liberty, or property by adjudication must be preceded by a hearing

In Boddie v. Connecticut, this Honorable Supreme Court held that "within the limits of practicality, a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786-87, 28 L.Ed.2d 113 (1971). Furthermore, this Court held

that "[w]hat the Constitution does require is an opportunity granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case." Id., 401 U.S. at 378, 91 S.Ct. at 786 (quoting both Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965) and Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)). In further elaboration concerning the words of the Due Process Clause of the Fourteenth Amendment, this Court held that "there can be no doubt that at a minimum they require that deprivation of life, liberty, or property by adjudication be precedent by notice and opportunity for hearing appropriate to the nature of the case. Id., 401 U.S. at 377-78, 91 S.Ct. at 786 (quoting Mullane, 339 U.S. at 313, 70 S.Ct. at 656).

At a minimum, this Honorable Court has required that any deprivation of life, liberty, or property by adjudication be preceded by a hearing appropriate to the nature of the case. Id. In the present case, Ms. Casselli was deprived by the Trial Court of the joint custody of her daughter which necessarily brought about an end to the parental rights she once enjoyed. Marin may no longer benefit from and enjoy the input and participation of her mother in her life. Now, Ms. Casselli may no longer take part in important parental decisions, such as where her daughter goes to school, with

whom her daughter may associate, or even what religious activities her daughter should or should not participate in. She no longer has the right to receive information about her daughter's medical records or school records or to participate in her daughter's school functions and extracurricular activities. She does not even have the right to know the whereabouts of her child. Ms. Casselli has lost all of this, her parental rights, without a hearing or even a chance to cross-examine the mental health professional upon whose recommendations the Trial Court solely relied in issuing its order. A deprivation of the magnitude endured by Marin and Ms. Casselli is certainly deserving of the highest protection the judicial system can afford and at the very minimum, a hearing.

B. A parent's relationship with his or her child is a fundamental right under the Due Process Clause of the Fourteenth Amendment

Beginning with Meyer v. Nebraska in 1923, this Honorable Supreme Court has defined the liberty guaranteed by the Due Process Clause as encompassing the right to raise children. Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626 (1923). In the 1972 case of Stanley v. Illinois, this Court held that "[i]t is plain that the interest of a parent in the

companionship, care, custody, and management of his or her children 'comes to this Court with a momentum for respect' " which "undeniably warrants deference and, absent a powerful countervailing interest, protection." Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (quoting Kovac v. Cooper, 336 U.S. 77, 95, 69 S.Ct. 448, 458, 93 L.Ed. 513 (1949). Finally, in both Lassiter v. Department of Soc. Servs. and Santosky v. Kramer, this Court has held that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." M.L.B. v. S.L.J., 117 S.Ct. 555, 565,136 L.Ed. 473 (1996) (quoting Santosky v. Kramer, 455 U.S. 745, 774 & 787, 102 S.Ct. 1388, 1405 & 1412, 71 L.Ed.2d 599 (1982) and referencing Lassiter v. Department of Soc. Servs., 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981)).

A mother's interest in the companionship, care, custody, and management of her daughter has been generally characterized by this Honorable Court as "an interest far more precious than any property right." Santosky, 455 U.S. at 759-60, 102 S.Ct. at 1397. Thus, according to the dictates of this Honorable Court, Ms. Casselli's interest in the custody and care of her daughter is a fundamental right deserving of the highest protections the judicial system can afford, and

she should be entitled at the very least to a hearing and a chance to cross-examine and confront the mental health professional upon whose written recommendations the Trial Court solely relied in stripping her of the custody of her daughter. Because the Trial Court has violated Ms. Casselli's Constitutional right to due process of law by stripping her of a fundamental right without a hearing, this Honorable Supreme Court should rescind, vacate, and annul the order of the Trial Court granting sole custody to Mr. Casselli.

II. THE TRIAL COURT VIOLATED MS. CASSELLI'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW BY STRIPPING HER OF THE JOINT CUSTODY OF HER DAUGHTER IN DIRECT CONTRAVENTION OF LOUISIANA LAW

Have Louisiana courts become so preoccupied with their own power that they readily disregard the laws which they have sworn to uphold in order to impose their will? A careful review of this case indicates the answer may unfortunately be "yes."

Under Louisiana law, a change in custody requires proof by clear and convincing evidence that such an award is in the best interest of the child. This burden of proof necessarily requires that custody matters be tried contradictorily. However, in this case, the Trial Court has stripped a parent of the custody of her child without a hearing and

without requiring the moving party to prove that such a change is in the best interest of the child.

Furthermore, Louisiana law requires that all court appointed mental health professionals who perform evaluations in child custody proceedings serve as witnesses of the court so that they may be subject to cross-examination. However, in this case, the Trial Court relied solely upon the written recommendations of the Court's mental health professional and then refused to allow a hearing which precluded the parties from cross-examining the Court's mental health professional.

Lastly, the Louisiana Civil Code does allow for an ex parte order of temporary custody, but it requires a showing through specific facts that immediate and irreparable injury will result to the child before the adverse party or his attorney can be heard in opposition. An ex parte order of temporary custody expires by operation of law within fifteen days and a rule to show cause must be assigned for hearing not more than fifteen days after the order has been signed. In this case, the Trial Court issued what amounts to an ex parte order of temporary custody without any showing that immediate or irreparable injury would result to the child and scheduled a hearing more than five months after the order was signed.

Because the Trial Court violated Ms. Casselli's Con-

stitutional right to due process of law under Section 1 of the XIV Amendment of the United States Constitution by stripping her of the joint custody of her daughter in direct contravention of Louisiana law, this Honorable Supreme Court should rescind, vacate, and annul the order of the Trial Court granting sole custody.

A. The Trial Court violated Louisiana law by stripping Ms. Casselli of the joint custody of her daughter in the absence of a hearing

Mr. Casselli's motion requested a change in the custody of a minor child from joint custody to sole custody in his favor. Under Louisiana Civil Code Article 132, such a change necessarily requires proof by clear and convincing evidence that such an award is in the best interest of the child. La. Civ. Code Art. 132 (West 1997). Furthermore, under Louisiana Code of Civil Procedure Article 963, if an order applied for by motion is "one to which the mover is not clearly entitled, or which requires supporting proof, the motion shall be served on and tried contradictorily with the adverse party." La. Code Civ. Proc. Art. 963 (West 1997).

Mr. Casselli has a burden of proving by clear and convincing evidence that it is in Marin's best interest that he be awarded sole custody before a court may issue an award

of sole custody, and this burden cannot be satisfied merely by oral motion solely upon the written recommendations of the court appointed evaluator and over the objections of the opposing party without affording the opposing party an opportunity to be heard. By denying Ms. Casselli the right to a hearing before issuing its order, the Trial Court has decided that even where the most important and fundamental rights are at issue, such as a parent's relationship with his or her child, it may summarily deny the party who stands to lose the most all of the protections afforded by the Louisiana Civil Code, the Louisiana Code of Civil Procedure, and the Louisiana Code of Evidence by simply denying that party a hearing.

Because the Trial Court has violated Ms. Casselli's Constitutional right to due process of law by stripping her of the custody of her minor child without a hearing, in contravention of Article 132 of the Louisiana Civil Code and Article 963 of the Louisiana Code of Civil Procedure, this Honorable Supreme Court should rescind, vacate, and annul the order of the Trial Court granting sole custody to Mr. Casselli.

B. The Trial Court violated Louisiana law by stripping Ms. Casselli of the joint custody of her daughter without an opportunity to cross-examine the Trial Court's mental health professional

Under Title 9, Section 331 of the Louisiana Revised Statutes, a court may order an evaluation of a child and any of the parties to a custody or visitation proceeding; however, the statute specifies that the mental health professional who performs the evaluation "shall provide . . . the parties with a written report . . . [and] shall serve as the witness of the court, subject to cross-examination by a party." La. Rev. Stat. § 9:331 (West 1997). Furthermore, the Louisiana Fourth Circuit Court of Appeal has held that pursuant to an evaluation performed under Section 331, failure to allow a party an "opportunity to . . . effectively cross examine [a mental health professional] results in a denial of fundamental due process requiring reversal of the judgment." Fuge v. Uiterwyk, 94-1815, p. 5-6 (La.App. 4 Cir. 3/29/95), 653 So.2d 707, 712.

A mental health professional, Dr. Janzen, was appointed by the Trial Court, pursuant to Section 331, to conduct an evaluation of both parties, Mr. Casselli and Ms. Casselli, and the minor child, Marin. The Trial Court accepted Dr. Janzen's recommendations outright, over the objections of Ms. Casselli, by granting Mr. Casselli sole custody of Marin in an Interim Order. At no time did Ms. Casselli waive her right to cross examine Dr. Janzen. Dr. Janzen did not serve as a witness of the Trial Court, nor was he subject to cross-examination by either party because the

Trial Court issued its order stripping Ms. Casselli of joint custody without a hearing.

Although it may be argued that trial courts are vested with much discretion in determining what is in the best interest of a child, the Trial Court has not weighed the best interest of the child in this case because it has based its decision solely upon one person's recommendation and has effectively silenced all criticism of this recommendation by denying the mother of the child a hearing or chance to cross-examine the Court's mental health professional.

In Fuge v. Uiterwyk, a mother and her children were denied the opportunity to review the report of the trial court's mental health professional. Id. The Louisiana Fourth Circuit Court of Appeal held that because the mother and children had been denied the opportunity to review the report and because this prevented them from being able to effectively cross-examine the court's mental health professional pursuant to Section 331, they had been denied fundamental due process requiring reversal of the judgment awarding the father visitation. Id. Like the mother in Fuge, Ms. Casselli has been denied the opportunity to effectively cross-examine the Trial Court's mental health professional because the Trial Court issued an order stripping her of the joint custody of her daughter prior to a hearing. Thus, like the Louisiana appellate court in Fuge, this Honorable Supreme Court should

rescind, vacate, and annul the order of the Trial Court.

C. Even under Article 3945 of the Code of Civil Procedure, which allows an order of temporary custody without a hearing, Ms. Casselli should not have been stripped of the joint custody of her daughter

Under Article 3945 of the Louisiana Code of Civil Procedure, an ex parte order of temporary custody may be granted if "[i]t clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury will result to the child before the adverse party or his attorney can be heard in opposition." La. Code Civ. Proc. Art. 3945 (West 1997). Furthermore, an ex parte order of temporary custody expires by operation of law within fifteen days, and a rule to show cause must be assigned for hearing not more than fifteen days after the order has been signed. Id.

The Trial Court's Interim Order, which stripped Ms. Casselli of joint custody and awarded sole custody to Mr. Casselli, cannot be justified under Article 3945 of the Code of Civil Procedure because Mr. Casselli's Supplemental and Amending Rule to Show Cause and for Contempt, wherein he requested that he be granted sole custody of Marin, is not a verified petition nor was it supported by an affidavit alleging immediate and irreparable injury to Marin if an order was not

entered before a hearing. [Appendix E]. Instead, Mr. Casselli specifically requested sole custody based upon an alleged substantial change in circumstances and not temporary custody to prevent immediate and irreparable injury to Marin. Furthermore, the hearing for Mr. Casselli's Rule has been scheduled for April 22, 1998, which is more than five months after the signing of the Interim Order granting custody and is far beyond the fifteen days required by Article 3945.

Because all of the provisions of Article 3945 have not been satisfied in the present case, this Honorable Supreme Court should rescind, vacate, and annul the order of the Trial Court as specifically mandated by Section E of that Article.

CONCLUSION

In stripping Ms. Casselli of the joint custody of her daughter without a hearing, the Trial Court has deprived Marin and Ms. Casselli of a fundamental right without the minimum protections required for even minor deprivations of life, liberty, or property by this Honorable Supreme Court. A deprivation of the magnitude endured by Marin and Ms. Casselli is certainly deserving of the highest protection the judicial system can afford and at the very minimum, a hearing. Thus, this Honorable Court should rescind, vacate,

and annul the order of the Trial Court granting sole custody.

Furthermore, because the Trial Court violated Ms. Casselli's constitutional rights to due process of law by stripping her of the custody of her daughter without a hearing, in direct contravention of Articles 132 of Louisiana Civil Code and 963 of the Louisiana Code of Civil Procedure, and without an opportunity to cross-examine the Trial Court's mental health professional, in direct contravention of Title 9, Section 331 of the Louisiana Revised Statutes, this Honorable Supreme Court should rescind, vacate, and annul the order of the Trial Court granting sole custody. Anything less would deprive Ms. Casselli of a hearing and summarily deny to her all of the protections afforded in a hearing by the Civil Code, the Code of Civil Procedure, and the Code of Evidence.

Respectfully Submitted,

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APPENDIX A

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

CASE NUMBER: 450-346 DRS:2

DONNA MADDEN, WIFE OF HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: Feb 18, 1994 _____
DEPUTY CLERK

CONSENT JUDGMENT

This cause came for hearing on the 18th day of February, 1994.

Present were:

Robert C. Lowe, attorney for/and **Henry Casselli, Jr.;** and **R. Scott Buhrer,** attorney for/and **Donna M. Casselli.**

The Court, considering the pleadings filed herein and the testimony and consent of the witnesses, finds that the parties have lived separate and apart, without reconciliation, for a period of one hundred and eighty (180) days, and that a judgment of divorce is warranted pursuant to La. Civil Code art. 102; therefore,

IT IS ORDERED, ADJUDGED AND DECREED that there be a judgment herein granting a divorce a vinculo matrimonii between Donna M. Casselli and her spouse, Henry Casselli, Jr., dissolving forever the bonds of matrimony heretofore existing between them.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Henry Casselli, Jr., agrees to and is hereby ordered to pay Donna M. Casselli contractual periodic alimony, not lump-sum alimony, of TWO THOUSAND AND NO/100 DOLLARS ($2,000.00) per month for a period of five (5) years, commencing February 1, 1994, and shall be due and payable on the first day of each month, and ending with the last payment as of January 1, 1999. This payment is not subject to any increase or decrease whatsoever under any circumstances whatsoever. Further, this payment shall terminate on Henry Casselli, Jr.'s death, Donna M. Casselli's death, her remarriage or residing in open concubinage. Donna M. Casselli agrees to and further knowingly waives any right which she may have to any other alimentary or spousal support under any and all circumstances whatsoever which waiver is in consideration of the financial payments and which waiver is accepted by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Henry Casselli, Jr. agrees to and further knowingly waives any right which he may have to permanent

alimony or any other alimentary or spousal support from Donna M. Casselli and which waiver is accepted by he Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Donna M. Casselli and Henry Casselli, Jr., shall share joint custody of their minor child, Marin Casselli, with Donna M. Casselli designated as the domiciliary parent subject to the joint custody implementation plan submitted by the parties to the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Henry Casselli, Jr., shall pay or cause to be paid to Donna M. Casselli the sum of ONE THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($1,200.00) per month in child support payable on the first day of each and every month, for the support and maintenance of their minor child, Marin Casselli, until it terminates under Louisiana law. This child support shall not be increased or decreased under any circumstances whatsoever. Both parties agree that this provision and aware are, and will be, in Marin's best interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Henry Casselli, Jr. shall pay or cause to be paid all middle and upper high school tuition and related expenses billed by the school for their minor child, Marin Casselli.

IT IS FURTHER ORDERED, ADJUDGED AND DE-

CREED that Henry Casselli, Jr. will provide and pay for, or cause to be provided and paid for, health insurance and all unreimbursed/uncovered medical and dental expenses for the benefit of their two children, Dana Casselli and Marin Casselli. There shall be no elective medical or dental expenses without the advance consent of Henry Casselli, Jr. The obligation concerning Dana and Marin shall last as long as she is a full time student in an accredited college, university or professional school.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Ford Explorer registered in the name of Henry Casselli, Jr., will be transferred to Dana Casselli at the end of the present semester, if but only if, she maintains a satisfactory grade point average, and that Henry Casselli, Jr. may use the Ford Explorer at his own expense until that time, and Donna Casselli is not entitled to any claim or any credit with regard to the use or value of the Ford Explorer, whether arising from or in any way related to Henry Casselli, Jr.'s use of the vehicle or because of the transfer as a donation to Dana, or if he keeps it because her grade point average is not satisfactory.

JUDGMENT READ, RENDERED AND SIGNED this 18 day of February, 1994 at Gretna, Louisiana.

/s/ Melvin C. Zeno
JUDGE

APPROVED AS TO FORM AND CONTENT:

/s/Donna M. Casselli
DONNA M. CASSELLI

/s/ R. Scott Buhrer
R. Scott Buhrer
Attorney at Law
600 Loyola Avenue
Suite 201
New Orleans, Louisiana 70113

/s/ Henry Casselli, Jr.
HENRY CASSELLI, JR.

/s/ Robert C. Lowe
Robert C. Lowe, Esq.
One Shell Square
701 Poydras Street, Ste. 3600
New Orleans, Louisiana 70139

APPENDIX B

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DRS-2

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: Nov 22, 96 _____
DEPUTY CLERK

RULE TO SHOW CAUSE AND FOR CONTEMPT

NOW INTO COURT, through undersigned counsel, comes mover, Henry Casselli, Jr., and on suggesting to this Honorable Court that a Consent Judgment was entered into by the parties on February 18, 1994; and on further suggesting that it was in the best interest of the minor child of the marriage, Marin Casselli, that joint custody be awarded to the parties; defendant-in-rule, Donna M. Casselli was designated as domiciliary parent, subject to a joint custody implementation plan submitted by the parties to the Court, which provides that: "All major decisions shall be **joint** and **shared**. In the event of a dispute concerning any such major deci-

sions, the parties shall resort to mediation or file a rule to show cause." Defendant-in-rule is attempting to usurp all powers and decision-making concerning the minor child in clear derogation of the joint custody implementation plan and the joint custody award. This is in violation of this Honorable Court's Order.

Also, without limitation, defendant-in-rule, Donna M. Casselli, is making it difficult for your mover, Henry Casselli, Jr. to enjoy his joint custody of the minor child, as she has placed a block on the telephone, making it impossible for Mr. Casselli to reach the minor child by telephone. On information and belief, defendant-in-rule, may be taping his conversations with the minor child. Henry Casselli, Jr. should be allowed unmonitored telephone access to his child, and these actions also clearly derogate the Consent Judgment entered into by the parties on February 18, 1994.

Further, without limitation, the minor child, Marin Casselli, who is presently 15 years old, has expressed and intent to spend equal time with her father, your mover. Such access is in the minor's best interest. As these parties have joint custody of the child, there should be no reason why the child cannot spend approximately equal time with her father, and Henry Casselli, Jr., hereby requests that Donna M. Casselli show cause why this equal sharing should not be awarded to him.

Concerning equal sharing, Henry Casselli, Jr., respectfully requests that he and Donna M. Casselli alternate major holidays, thereby giving them equal time and access with the minor child, Marin Casselli, over all major holidays.

Henry Casselli, Jr., your mover, believes that defendant-in-rule ahs made derogatory statements about him, perhaps even to the minor child, and is directly or indirectly attempting to alienate the child's affection for him.

Mover, Henry Casselli, Jr., respectfully suggests to this Honorable Court that defendant-in-rule, Donna M. Casselli should be ordered to show cause on a date and at a time to be set by this Honorable Court, why he should not be granted the relief he seeks. Further, your mover requests that defendant-in-rule show cause why she should not be held in contempt of this Court and ordered to pay attorney's fees and court costs incurred by mover in prosecution of thus rule, since defendant-in-rule has acted in derogation of the Consent Judgment and joint custody implementation plan entered into by the parties.

Respectfully Submitted,

LOWE, STEIN, HOFFMAN, ALLWEIS & HAUVER

/s/ Paula H. Lee
ROBERT C. LOWE (8904)
PAULA H. LEE (24155)
3600 One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139-3600
(504) 581-2450
Attorneys for Henry C. Casselli, Jr.

ORDER

Considering the above and foregoing:

IT IS ORDERED that defendant-in-rule, Donna M. Casselli, show cause on the 7 day of April, 1997, at _____ o'clock ___.m., why she should not, in accordance with the Consent Judgment and joint custody implementation plan, allow mover, Henry Casselli, Jr., equal input on all decisions regarding the minor child, Marin Casselli; why she should not immediately remove the call block feature from the phone and allow Henry Casselli, Jr., unrestricted and unmonitored access by telephone to the minor child; why Marin Casselli should not spend equal time with both parents; why equal time with the minor child should not include alternate sharing of all major holidays; why Donna M. Casselli should not refrain from attempting to alienate the child's affection for

your mover, why Donna M. Casselli should not be held in contempt of court for refusing to adhere to the Consent Judgment and joint implementation plan in failing and refusing to allow plaintiff-in-rule his proper input concerning all major decisions; and why Donna M. Casselli should not be required to pay the attorney's fees and court costs incurred by mover in the prosecution of this rule.

Gretna, Louisiana, this 25 day of November, 1996.

/s/ Walter J. Rothschild
JUDGE

PLEASE SERVE:

Donna Madden Casselli
4015 N. Labarre Road
Metairie, Louisiana 70002

APPENDIX C

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DOMESTIC RELATIONS SECTION "TWO"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: Dec 13, 96 DEPUTY CLERK:_____

INTERIM ORDER

This matter came on for hearing on December 12, 1996, on a request for a status conference by Henry Casselli, Jr. Attorneys for both parties were present.

After having a status conference with the parties, and discussing the situation with the minor child, Marin's, psychologist, which procedure was agreed upon by the parties,

IT IS ORDERED that Henry Casselli will have physical custody of the minor child, Marin. Marin will have visitation with her mother on the terms and conditions, as recommended by Marin's therapist, Dr. Baer, after consultation with Mrs. Casselli's therapist, Brenda Coleman, who will have input from Dr. Roniger, on a weekly basis, and other-

wise on such terms, conditions and provisions as recommended by Dr. Baer.

IT IS FURTHER ORDERED that this Interim Order is entered without prejudice to the rights of either party and specifically without giving rise to any presumption in favor of either party.

GRETNA, Louisiana, this 13 day of December, 1996.

/s/ Walter J. Rothschild
JUDGE

READ AND APPROVED AS TO FORM
AND CONTENT AND SUBMITTED:

/s/ Robert C. Lowe
ROBERT C. LOWE (8904)
One Shell Square, Suite 3600
701 Poydras Street
New Orleans, LA 70139-3600
Phone: (504) 581-2450
Attorney for Henry Casselli, Jr.

/s/ Leslie A. Bonin
LESLIE A. BONIN (14090
700 Camp Street
New Orleans, LA 70130
Phone: (504) 524-3306
Attorney for Donna Casselli

APPENDIX D

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIV. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: Jan 6, 97 _____
DEPUTY CLERK

RULE TO SHOW CAUSE

NOW INTO COURT, through undersigned counsel, comes defendant/movant-in-rule, Henry Casselli, Jr., who respectfully represents the following:

I.

By Consent Judgment of 18 February 1994 plaintiff and defendant were awarded joint custody of the minor child, Marin Casselli, with Donna M. Casselli designated as the domiciliary parent subject to the Joint Custody Implementation Plan submitted by the parties to the Court on that same day.

II.

Paragraph E(ii) of the Joint Custody Implementation Plan stated as follows:

> The parties agree to forego adopting a rigid access schedule at this time, believing that it is in the best interest of their minor child that parent access be flexible depending on the circumstances at any given instance.

III.

On 22 November 1996 movant filed a Rule To Show Cause And For Contempt wherein he requested that he be awarded approximately equal timesharing with the minor child, Marin Casselli.

IV.

Additionally, Movant has filed simultaneously herewith a Supplemental and Amending Rule To Show Cause And for Contempt where he requests that he be awarded sole custody of the minor child, or alternatively, if joint custody is maintained, that he be designated domiciliary parent.

V.

Movant avers that good cause exists, and that it is in the best interest of the minor child, that this Honorable Court order an evaluation of plaintiff, Donna Casselli, by a mental

health professional agreed upon by the parties, or appointed by the Court, failing the parties ability to agree; that the Court order Donna Casselli to submit to and cooperate in the evaluation, testing, or interview by the mental health professional; that the mental health professional provide the Court and the parties with a written report and serve as witness of the Court, subject to cross-examination by each party; and that the Court render judgment for costs of the evaluation or any party thereof as it considers equitable, all as provided for by La.R.S. 9:331.

WHEREFORE, movant, Henry Casselli, Jr., prays that Donna M. Casselli be ordered to appear and show cause, if any she has or can, why a mental health professional should not be appointed and an evaluation of her conducted pursuant to La.R.S. 9:331, all as prayed for hereinabove.

Respectfully Submitted,

LOWE, STEIN, HOFFMAN, ALLWEIS & HAUVER

/s/ Suzette Marie Smith
ROBERT C. LOWE (8904)
SUZETTE MARIE SMITH (17806)
3600 One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139-3600
(504) 581-2450
Attorneys for Henry C. Casselli, Jr.

ORDER

Considering the above and foregoing:

IT IS ORDERED that Donna M. Casselli appear and show cause, if any she has or can, on the 20 day of February, 1997, at 9 o'clock a.m., why a mental health professional should not be appointed to evaluate her pursuant to the requirements and terms of La.R.S. 9:331, all as prayed for hereinabove.

Gretna, Louisiana, this 6 day of January, 1997.

/s/ Marion Edwards
JUDGE

PLEASE SERVE:
Donna Madden Casselli
4015 N. Labarre Road
Metairie, Louisiana 70002

APPENDIX E

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIV. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: Jan 6, 97 _____
DEPUTY CLERK

SUPPLEMENTAL AND AMENDING RULE

TO SHOW CAUSE AND FOR CONTEMPT

NOW INTO COURT, through undersigned counsel, comes movant, Henry Casselli, Jr., who respectfully supplements his Rule To Show Cause And For Contempt filed herein on 22 November 1996, by adding the following:

I.

By Consent Judgment of 18 February 1994 plaintiff and defendant were awarded joint custody of the minor child, Marin Casselli, with Donna M. Casselli designated as domicilary parent subject to the Joint Custody Plan of Implementation submitted by the parties to the court on that same day.

II.

Movant further avers that the Joint Custody Plan of Implementation of 18 February 1994 provides the following:

C. NO ALIENATION OF AFFECTIONS

> Neither Father nor Mother shall attempt, or condone any attempt, directly or indirectly, by any artifice or subterfuge whatsoever, to estrange the child from the other party or the other's family, or to injure or impair the mutual love and affection of the child.
>
> At all times the parties shall encourage and foster in the child sincere respect and affection for both parties, and shall not hamper the natural development of the child's love and respect for the other parent or that parent's family.

III.

Despite the prohibition on alienation of affections, defendant-in-rule, Donna M. Casselli, has attempted to estrange the child from movant, and to injure and impair the child's love and affection for movant by inventing and publicizing false allegations of abuse of the child by movant, thereby interfering with movant's free access, both verbally, and in person, to the minor child, all in violation of the prohibition on alienation of affections contained in the Joint Custody Implementation Plan referenced herein.

IV.

Movant further avers that, since the rendition of the 18 February 1994 Consent Judgment there has been a substantial change in circumstances materially affecting the welfare of the child such that it is in the best interest in the minor child that sole custody be awarded to Henry Casselli, Jr., or, alternatively, failing that, that if custody be maintained and Henry Casselli, Jr., be designated domiciliary parent. The change of circumstances includes, but is not limited to, Donna Madden Casselli's invention and continuing propagation of false allegations of abuse of the child by Henry Casselli, Jr., her threats to the child to have Henry Casselli, Jr., arrested, her confrontational and inflammatory conduct toward Henry Casselli, Jr., the distress and embarrassment caused to Henry Casselli, Jr., and the child, by Donna Madden Casselli's words and conduct, and her disregard for the child's needs and preferences.

WHEREFORE, movant, Henry Casselli, Jr., prays that his original Rule To Show Cause And For Contempt be supplemented accordingly, and that defendant-in-rule, Donna M. Casselli, be ordered to appear and show cause, if any she has or can, why he should not be granted the relief sought in his original Rule to Show Cause And for Contempt, this Supplemental and Amending Rule To Show Cause And

For Contempt, and, additionally, why she should bot be held in contempt of this Honorable Court and punished accordingly for her violation of the Joint Custody Implementation Plan of 18 February 1994.

Respectfully Submitted,

LOWE, STEIN, HOFFMAN, ALLWEIS & HAUVER

/s/ Suzette Marie Smith
ROBERT C. LOWE (8904)
SUZETTE MARIE SMITH (17806)
3600 One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139-3600
(504) 581-2450
Attorneys for Henry C. Casselli, Jr.

ORDER

Considering the above and foregoing:

IT IS ORDERED that defendant-in-rule, Donna M. Casselli, appear and show cause, if any she has or can, on the 7th day of April, 1997, at 9:00 o'clock a.m., why movant should not be granted the relief requested in his original Rule To Show Cause And For Contempt and this Supplemental And Amending Rule to Show Cause and For Contempt, and why she should not be held in contempt of this Honorable Court and punished accordingly for her violation of the Joint

Custody Implementation Plan of 18 February 1994.

Gretna, Louisiana, this 6 day of January, 1997.

/s/ Marion Edwards
JUDGE

PLEASE SERVE:
Donna Madden Casselli
4015 N. Labarre Road
Metairie, Louisiana 70002

APPENDIX F

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIV. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: Nov 7, 97 _____
DEPUTY CLERK

INTERIM ORDER

This matter came for a status conference on October 8, 1997.

Present were:

Leslie A. Bonin, attorney for plaintiff, Donna M. Casselli; and Robert C. Lowe and Suzette M. Smith, attorney for defendant, Henry Casselli, Jr.

Following a status conference with the attorneys and a review of Dr, William Janzen's custody report:

IT IS ORDERED that Henry Casselli, Jr. shall have **interim sole custody** of the minor child, Marin Casselli, pursuant to the recommendations of Dr. William Janzen

contained in his most recent custody evaluation report.

IT IS FURTHER ORDERED that Donna Madden Casselli shall have **interim visitation** with the minor child, Marin, every other weekend, beginning after school on Thursday and ending just before school starts on Monday mornings. The interim visitation shall commence on Thursday, October 9, 1997.

IT IS FURTHER ORDERED that Major Holidays shall be worked out among and between the parties. Until the parties implement a schedule for major holidays, such holidays shall be **alternated** on an interim basis. The parties may call a status to resolve any conflicts regarding visitation or custody.

IT IS FURTHER ORDERED that this Interim Order is entered without prejudice to the rights of either party and specifically without giving rise to any presumption in favor of either party.

Thus done and signed in Gretna, Louisiana this 7 day of November, 1997.

/s/ Walter J. Rothschild
JUDGE

APPENDIX G

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIV. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: Nov 7, 97 _____
DEPUTY CLERK

NOTICE OF INTENTION TO APPLY FOR WRITS OF
REVIEW, CERTIORARI, AND MANDAMUS

TO: THE HONORABLE WALTER ROTHSCHILD
Judge, Division "A"
Twenty Fourth Judicial District Court for the Parish of Jefferson
Gretna Courthouse
Gretna, LA

AND

HENRY C. CASSELLI
through his attorney,
Mr. Robert C. Lowe
701 Poydras Street, #3600
New Orleans, LA 70139

In accordance with Rule 4-2, Uniform Rules – Courts of Appeal, you are hereby notified of the Intention of Donna Madden Casselli, Plaintiff in the above matter, to apply to the Court of Appeal, Fifth Circuit, for Writs of Review, Certiorari, and Mandamus concerning the Order of this Court rendered on the 8th day of October, 1997.

Respectfully Submitted:

/s/ Leslie A. Bonin
LESLIE A. BONIN #14090
Attorney for Donna Madden Casselli
700 Camp Street
New Orleans, LA 70130
Telephone: (504) 524-3306

ORDER

Considering the above and foregoing;

IT IS ORDERED that Donna Madden Casselli, Plaintiff/Relator herein, has until the 12th day of November, 1997 to file the application for writs of review, certiorari, and mandamus concerning the Order rendered herein on the 8th day of October, 1997 by the Honorable Walther Rothschild, Judge, Division "A", Twenty Fourth Judicial District Court for the Parish of Jefferson, with the Court of Appeal, Fifth Circuit.

GRETNA, LOUISIANA this 27th day of October,

1997.

/s/ Walter J. Rothschild
JUDGE

APPENDIX H

No. 97-C-1127

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

/s/ by clerk of court [illegible]
Clerk

DONNA MADDEN, WIFE OF HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

IN RE DONNA MADDEN CASSELLI

APPLYING FOR SUPERVISORY WRITS OF REVIEW, CERTIORI AND MADAMUS DIRECTED TO THE HONORABLE WALTER J. ROTHSCHILD, JUDGE, DIVISION "A", TWENTY-FOURTH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA, NUMBER 450-346

Attorneys for Relator:

Ms. Leslie A. Bonin
Attorney at Law
700 Camp Street
New Orleans, LA 70130
(504) 524-3306

Attorneys for Respondent:

Mr. Robert C. Lowe
Ms. Suzette M. Smith
Attorney at Law
701 Poydras Street
Suite 3600 One Shell Square
New Orleans, LA 70139
(504) 581-2450

DECEMBER 16, 1997

PETITION FOR WRITS DENIED
REMANDED WITH INSTRUCTIONS

Considering the volatile background of this case, we cannot say that the trial judge erred in issuing the November 7, 1997 interim order. What is of concern to this Court, however, if the fact that the hearing (trial) has been pending for months and is not scheduled to be heard until April 22-24, 1998. Matters of this type should be heard as expeditiously as possible. Accordingly, we remand to the trial judge for him to set a trial date earlier than April 22-24, 1998.

/s/ Charles H. Gaudin
JUDGE H. CHARLES GAUDIN

/s/ Fred S. Bowes
JUDGE FRED S. BOWES

/s/ Charles Grisbaum, Jr.
JUDGE CHARLES GRISBAUM, JR.

APPENDIX I

The Supreme Court of the State of Louisiana

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR,

VS. NO. 98-CC-0126

HENRY CASSELLI, JR.

– – – – – –

IN RE: Madden, Donna; Casselli, Donna Madden; - Plaintiff(s); Applying for Supervisory and/or Remedial Writs; Parish of Jefferson 24th Judicial District Court Div. "A" Number 450-346; to the Court of Appeal, Fifth Circuit, Number 97-CW-1127

– – – – – –

February 6, 1998

Denied.

PFC
WFM
HTL
CDK
BJJ
JPV
CDT

KNOLL, J. not on panel.

Supreme Court of Louisiana
February 6, 1998

/s/ by clerk of Court [illegible]
Clerk of Court
For the Court

APPENDIX J

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIV. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: Feb 9, 98 _____
DEPUTY CLERK

REQUEST FOR STAY ORDER

NOW INTO COURT, through undersigned counsel, comes Mover, Donna Madden Casselli, who respectfully requests that this Honorable Court stay the Interim Order rendered herein on the 7th day of November, 1997 changing the custody of the minor child, Marin, from joint custody to sole custody pending the timely filing and disposition of her Application to the Supreme Court of the United States for a Writ of Certiorari.

Respectfully submitted:

/s/ Leslie A. Bonin
LESLIE A. BONIN #14090
Attorney for Donna Madden Casselli
700 Camp Street
New Orleans, LA 70130
Telephone: (504) 524-3306

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIV. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED:_____ _____
DEPUTY CLERK

ORDER

Considering the above and foregoing;

IT IS ORDERED that the Interim Order signed herein on the 7th day of November, 1997 changing custody of the minor child, Marin Casselli, from joint custody to sole custody be and the same is hereby stayed pending the timely filing and disposition of the Application by Mover, Donna Madden Casselli, to the Supreme Court of the United States for a Writ of Certiorari.

GRETNA, LOUISIANA this 9 day of February, 1998.

DENIED

/s/ Walter J. Rothschild
JUDGE

PLEASE SERVE:

HENRY CASSELLI,
Through his attorney,
Mr. Robert C. Lowe
701 Poydras St., #3600
New Orleans, LA 70139

Supreme Court, U.S.
FILED
MAR 10 1998
CLERK

No. 97-1319

In The

Supreme Court of the United States

October Term, 1997

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.,

Petitioner,

versus

HENRY CASSELLI, JR.,

Respondent.

**On Petition For Writ Of Certiorari To
The 24th Judicial District Court
For The Parish Of Jefferson, State Of Louisiana**

RESPONDENT'S BRIEF IN OPPOSITION

ROBERT C. LOWE, ESQ.*
SUZETTE MARIE SMITH, ESQ.
LOWE, STEIN, HOFFMAN,
ALLWEISS & HAUVER
701 Poydras St., Ste. 3600
New Orleans, LA 70139-7735
(504) 581-2450
Attorneys for Respondent

Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

93PP

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TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

MAY IT PLEASE THE COURT:

This brief is respectfully submitted on behalf of respondent, Henry Casselli, Jr., in opposition to the petition of Donna Madden Casselli for a writ of certiorari to review the decision of the Honorable Walter J. Rothschild, Judge, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.

I.

STATEMENT OF THE CASE

Mr. and Mrs. Casselli are the divorced parents of two daughters, Dana, age 22, and Marin, age 16. When the Cassellis divorced in 1994 they agreed to share joint custody of Marin with Mrs. Casselli designated domiciliary parent. Their joint custody implementation plan (the "Plan") provided, in part, that all major decisions concerning Marin should be joint and shared and required the Cassellis to consult together concerning all decisions affecting Marin's "general health and welfare, education, and development". It prohibited acts which would estrange Marin from the other parent, required each to "encourage and foster in Marin sincere respect and affection for both parents, and mandated "flexible" parental access "depending on the circumstances at any given instance". Appendix "A".

Despite the Plan, Mrs. Casselli conducted an escalating campaign of harassment and interference. For example, among numerous acts violative of the Plan, Mrs.

Casselli told Marin that Mr. Casselli had sex with animals and that he would probably die of AIDS.

On 22 November 1996 Mr. Casselli filed a motion seeking equal time periods of physical custody of Marin. Appendix "B".

Mrs. Casselli responded by contacting Marin's pediatrician's nurse, Nurse Beltz, on 26 November 1996 and falsely accusing Mr. Casselli of "raping" Marin. She also reported, among other things, that Marin had blood in her panties and all over the toilet every time she came home from spending the night with her father, that Marin was taking five to six baths a day, and that Marin had expressed a desire to be dead. Mrs. Casselli told Nurse Beltz that she had Marin's bloodstained panties and other panties with discharge, and that she had a tape of Mr. Casselli discussing Marin's nipples and masturbation.

Nurse Beltz reported Mr. Casselli to Child Protection. As a result of that report, both Mr. Casselli and Marin had to submit to interrogation at police headquarters and give statements.[1]

Mrs. Casselli admitted in discovery that she had told well over fifteen people, including friends, neighbors, and the parents of Marin's classmates, of her allegations. Fabrication aside, publication of these allegations, and the concomitant humiliation and shame experienced by Marin, is indefensible and uncontrovertible evidence that

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[1] This, of course, did not happen until March, 1997, four months after the initial complaint was made to Child Protection, thus prolonging the distress created for Marin and Mr. Casselli by the false allegations.

Mrs. Casselli was unable or unwilling, or both, to conduct herself in the best interest of Marin.

As a result of Mrs. Casselli's false allegations and conduct, Marin, then only 15, fled the home of her mother and took refuge at the home of a classmate where she remained until 12 December 1997 when the trial court granted *physical* custody to Mr. Casselli with Mrs. Casselli having visitation on the terms and conditions recommended by Marin's therapist. The parties consented to this order. Appendix "C". It did not affect Marin's *legal* custody.

Marin, who consistently denied that any abuse had occurred, was distressed and embarrassed by the entire matter. She was particularly distressed by the prospect of a gynecological examination for the detection of sexual abuse in light of her consistent denials. She was also distressed by the knowledge that some of her classmates and their parents were aware of the accusations. The impact on Mr. Casselli, both professionally and personally, was equally devastating.

On 6 January 1997 Mr. Casselli filed a supplemental motion seeking sole custody. Appendix "D".

The hearing on Mr. Casselli's motion was continued from April 1997 because the court appointed mental health expert had not completed his evaluation, and again from October 1997 because he had not issued his report in time for the parties to complete discovery and trial preparation. Both parties consented to both continuances, Appendices "E" and "F". Report of Dr. Janzen. Appendix "G".

Although Mrs. Casselli would like this Court to believe that joint custody went smoothly between the parties from 18 April 1994 until 22 November 1996 when she allegedly experienced her "allergic reaction" which she claims should absolve her of all responsibility for her actions, that is simply not true. In addition to the facts recited above, and others omitted for brevity's sake, Mr. Casselli learned, only after Mrs. Casselli went public with her allegations, that she had been making allegations of sexual abuse long before November of 1996. As Dana reported to Dr. Janzen,

> . . . (S)he first began to hear about the sex abuse allegations in September or October of 1995. She stated "it all began over the phone. She called constantly. It began with your father is sexually abusing your sister." She stated that as the mother continued to make the allegations they became more graphic. She stated that the motner stated "your father is fucking your sister" on two occasions. Once in February or March of 1996 and once in May of 1996." She stated that on one occasion she stated "you don't even care your father is fucking your sister." She stated that this occurred in May of 1996. She also stated that in October of 1995 the mother told her that the father was sleeping in the same bed with Marin. She stated that during one of these telephone conversations the mother stated "do you really believe that selfish man will sleep on a couch when he can sleep in a queen size bed with your sister." Dana also stated that on one occasion the mother told her about finding Marin's underwear with blood and her father's semen in it. Dana stated sometimes "she would call and say how proud of

> herself she was that she told him to stay in his corner and play with himself. She said how in another conversation he enjoys playing with Marin's nipples." She stated that her mother would call two and three times per day to tell her about these things. Dana stated that in March of 1996 her mother also alleged that Mr. Casselli had sex with men and animals in addition to having sex with prostitutes. She stated that her mother had told her "we have to do whatever we can to keep your father from your sister." Dana also stated that on one occasion the mother told her that she was dying of liver or kidney cancer.
>
> Appendix "G", Pages 11, 12

Mrs. Casselli's alleged "allergic reaction" supposedly occurred in November of 1996. Even if her excuse is well founded, which it is not, it cannot explain or excuse her behavior as far back as September or October of 1995 when Dana first began to hear about the sexual abuse allegations.

Nor, did Mrs. Casselli's lies and fabrications end after her alleged "allergic reaction" in November of 1996. Mrs. Casselli was deposed on 27 August 1997. In that deposition she testified that she had audio tapes of telephone conversations between Mr. Casselli and Marin, the soiled panties which she had reported to Nurse Beltz, and the alleged audio tape of Mr. Casselli discussing Marin's nipples and masturbation. Appendix "H".

Mr. Casselli immediately issued discovery requesting the tapes and the panties. Appendix "I". Mrs. Casselli admitted in her responses to those requests that "there were and are no tapes, audio or visual, of Henry Casselli,

Jr. or Marin Casselli" and that there "was and is no soiled or stained underwear of Marin's". Appendix "J".

Mrs. Casselli's deposition recommenced on 15 September 1997. In that deposition she admitted that her testimony in the previous deposition about the tapes and the panties had not been truthful. Appendix "K".

On 24 September 1997 counsel for both parties consulted by telephone and agreed to continue the trial because the mental health expert had not yet issued his report. Both sides agreed to go to court on the morning of 8 October for a status conference should either side wish to argue something to the judge based on the expert's report, which they were hoping to receive before 8 October, and to select new trial dates. Appendices "L", "M" and "N".

On 29 September 1997 the mental health evaluator issued his report. He concluded, in part, that Mr. Casselli had not sexually abused Marin, that Mr. Casselli appeared normal, and that Mrs. Casselli:

> appears to have had psychological problems for an extended period of time. She has been diagnosed as histrionic personality disorder with borderline features and in a psychological evaluation she was diagnosed as probably suffering from a borderline personality disorder. There have also been indications that she can experience some rather severe depression. It appears that Ms. Casselli began making allegations of sexual abuse as early as October of 1995. . . . (T)he information which Dana gave me suggests that a rather insidious personality decompensation was well in process by at least October of 1995, and very likely for quite some

time prior to that. Given such serious personality decompensation intense long-term psychotherapy would be required for recovery. With serious personality disorders recovery sometimes never occurs. Given Ms. Casselli's continued beliefs it does not appear that her characterological problems have been resolved.

Appendix "G" at 12, 13.

Dr. Janzen's recommendations included the following:

1. It would appear to be in Marin's best interest if the father had sole custody. Ms. Casselli continues to believe that the father behaves inappropriately with Marin. The type of behavior which she considers inappropriate has been denied by Marin to exist. Unfortunately what Ms. Casselli believes to be occurring would be a precursor to full blown sexual abuse allegations. **I do not feel that under those circumstances it would be possible for Mr. Casselli and Ms. Casselli to jointly make decisions which would be in Marin's best interest.** I would also recommend that the current visitation arrangement remain in place. In other words, I would recommend that the mother continue having visits with Marin every other week from Thursday after school until Monday morning. Major holidays can be alternated. I spoke with Dr. Baer and she indicated that the shared custody arrangements during the summer months did not cause Marin any problems. Of course, it also appears that Marin was gone on various trips for almost half the summer. Nonetheless, if the situation does not deteriorate then it may be possible

> for the parents to have a shared custody arrangement during the summer of 1998 with the father having domiciliary status.
>
> Appendix "G" at 12, 13.
> (Emphasis added).

The parties appeared for a status conference on 8 October 1997. The court entered an Interim Order granting Mr. Casselli interim sole custody of Marin and granting Mrs. Casselli interim visitation every other weekend, beginning after school on Thursday and ending just before school on Monday and alternating major holidays. The Interim Order was entered without prejudice to the rights of either party and specifically without giving rise to any presumption in favor of either party. Appendix "O". The custody trial was set to be heard on 22, 23 and 24 April 1998.

Mrs. Casselli sought review by the Court of Appeal, Fifth Circuit, for the State of Louisiana. On 16 December 1997 the Fifth Circuit denied her petition for Writs and remanded with the following instructions:

> Considering the volatile background of this case, we cannot say that the trial judge erred in issuing a November 7, 1997 Interim Order. What is of concern of this court, however, is the fact that the hearing (trial) has been pending for months and is not scheduled to be heard until April 22 - 24, 1998. Matters of this type should be heard as expeditiously as possible. Accordingly, we remand to the trial judge for him to set a trial date earlier than April 22 - 24, 1998.
>
> Appendix "P".

On 16 January 1998 the trial court offered Mrs. Casselli an earlier trial date. She declined. Appendices "Q" and "R".

On 6 February 1998 the Supreme Court of the state of Louisiana unanimously declined Mrs. Casselli's Application For Review. Appendix "S".

Mrs. Casselli's assertions to the contrary, it is not true that "Marin may no longer benefit from and enjoy the input and participation of her mother in her life". Petition at 12. Mrs. Casselli has visitation every other weekend from Thursday afternoon until Monday morning, and on alternating major holidays. Ms. Casselli admits in her petition that Marin spends additional time with her. Petition at 6. Nor is it true that Mrs. Casselli "no longer has the right to receive information about her daughter's medical records or school records or to participate in her daughter's school functions and extracurricular activities. Petition at 13. La. R.S. 9:351 states that "access to records and information pertaining to a minor child, including, but not limited to medical, dental, and school records, shall not be denied to a parent solely because he is not the child's custodial or domiciliary parent." Neither the law nor the Interim Order have deprived her of that right or the right to participate in school functions and extracurricular activities. Marin is sixteen years old and a sophomore in high school. Mrs. Casselli's protest that she "may no longer take part in important parental decisions, such as where her daughter goes to school, with whom her daughter may associate or even what religious activities her daughter should or should not participate in" are without merit. Petition at 12, 13. Her school and her religion have long been decided and few parents decide

with whom their sixteen year olds may associate. It is also not true that "Mrs. Casselli has lost . . . her parental rights." Petition at 13. Her parental rights were not terminated. She has merely temporarily lost *legal* custody in a private, civil proceeding. Trial will commence on 22 April 1998, and would have commenced sooner had Mrs. Casselli not declined the trial court's offer of an earlier hearing.

II.

ARGUMENT

1. THIS COURT DOES NOT HAVE JURISDICTION TO REVIEW THE JUDGMENT AT ISSUE BECAUSE IT IS NOT A FINAL JUDGMENT AS CONTEMPLATED BY 28 U.S.C. § 1257.

The judgment below is an interim order entered without prejudice to the rights of either party and specifically without giving rise to any presumption in favor of either party. It awarded only "temporary" legal custody of Marin to Mr. Casselli. Appendix "C". The hearing to finally adjudicate the custodial issue is scheduled to commence on 22 April 1998. Appendix "F". It would have already commenced had Mrs. Casselli not declined the trial court's offer of an earlier trial date. Appendices "Q" and "R".

The final judgments rule precludes review "where anything further remains to be determined by a State court". *Radio Station WOW v. Johnson*, 326 U.S. 120, 124, 65 S. Ct. 1475, 89 L. Ed. 569 (1945); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975).

Custody has not yet been finally determined. This Court cannot have jurisdiction until custody is finally concluded.

2. BECAUSE THE TRIAL COURT ONLY TEMPORARILY DIVESTED MRS. CASSELLI OF LEGAL CUSTODY AND DID NOT PERMANENTLY AND IRREVOCABLY DEPRIVE HER OF PARENTAL RIGHTS SHE WAS NOT DENIED ADEQUATE DUE PROCESS UNDER THE CIRCUMSTANCES.

This case is an ordinary, routine civil litigation between purely private parties. *Rowell v. Oesterle*, 626 F.2d 437 (5th Cir. Fl. 1980). The State of Louisiana is not a party to these proceedings and has not sought to terminate or in any way interfere with Mrs. Casselli's parental rights. The cases cited by Mrs. Casselli which address the due process to which a parent is entitled when a state seeks to permanently and irrevocably terminate parental rights are not applicable because the order below has only temporarily divested Mrs. Casselli of legal custody.[2] Because it is not a permanent, irrevocable termination, she is not entitled to the same due process as the parents in those cases.

The care of a child should be at all times committed to a responsible adult who has ultimate decision-making

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[2] As noted in *M.L.B. v. S.L.J.*, 117 S. Ct. 555, 136 L. Ed. 2d 473 (1996), quoting Justice Blackmun's dissent in *Lassiter v. Dept. of Social Servs. of Durham Cty.*, 452 U.S. 18, 68 L. Ed. 2d 640, 101 S. Ct. 2153 (1981): "A termination of parental rights is both total and irrevocable. Unlike other custody proceedings, it leaves the parent with no right to visit or communicate with the child . . . ".

authority for the child. *Ginsberg v. State of N.Y.*, 390 U.S. 629, 88 S. Ct. 1274, 20 L. Ed. 2d 195 (1968), *rehearing denied*, 391 U.S. 971, 88 S. Ct. 2029, 20 L. Ed. 2d 887 (1968). The unsavory facts of this case place it squarely in the realm of a balancing of Mrs. Casselli's qualified right to control the upbringing of her child with Marin's right to be in a custodial situation free from harm to her physical or mental health, Mr. Casselli's duty and right to see that his child is in a custodial situation free from harm to her physical or mental health, and the state's right and duty to the same end. *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd.*, 533 F.2d 1245 (3d Cir. 1976), *cert. denied*, 429 U.S. 964, 97 S. Ct. 394, 50 L. Ed. 2d 333 (1976).

Due process is flexible and calls for such procedural protections as a particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Once it is determined that the due process clause applies, the determination of how much process is due depends on the circumstances of a particular case, and must begin with a determination of the precise nature of the government function involved and of the private interest that has been affected by governmental action. *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961); *Goldberg v. Kelly*, 397 U.S. 254, 263, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). The due process to which a litigant is entitled is determined in part by the extent to which she may be "condemned to suffer grievous loss." *Goldberg*, 397 U.S. 254.

In this essentially private, civil action, the State's only action has been to temporarily award sole custody of

Marin, in her best interest as recommended by the court appointed mental health expert, to Mr. Casselli. The State has not deprived Mrs. Casselli of her parental rights, nor has she "been condemned to suffer a grievous loss". She has a 22 April 1998 hearing date. Indeed, part of the temporary "deprivation of custody" about which Mrs. Casselli complains has been by her own choice. She declined an earlier trial date.

Given the circumstances, and the competing interests, the State has not deprived Mrs. Casselli of any due process right which she may have.

3. THE TRIAL COURT DID NOT CONTRAVENE LOUISIANA LAW.

It is well settled that the best interest of the child is the paramount consideration in custody matters, and that the trial court is vested with vast discretion and broad, independent powers in matters of custody. This discretion may be exercised pursuant to express grants of authority or, by the exercise of the inherent judicial power which all courts possess. In the instant case, the trial court, acting as fiduciary for Marin, and in pursuit of a custody arrangement which would be of the greatest benefit to Marin until a hearing can be had, properly awarded interim sole custody to Mr. Casselli. Considering the facts of this case, the court had no other option in Marin's best interest than to grant interim sole custody to Mr. Casselli pending the hearing.

Mr. Casselli sought sole custody. It was through no fault of his, and, more importantly, through no fault of Marin's, that the mental health evaluations took over six

months to complete, thus necessitating a continuance of the October 1997 trial date. Due to the delay in the report, neither side was able to complete discovery prior to the October hearing date, and in fact, discovery has not yet been completed. Pending a trial date, the court is mandated to protect the child. She is best protected by sole custody with Mr. Casselli.

Mrs. Casselli's contention that the Interim Order violates La. Code Civ. Proc. art. 3945 is incorrect. That article is not applicable. It applies only to "ex-parte" applications for temporary custody. Ex-parte means:

> A judicial proceeding, order, injunction, *et cetera*, is said to be *ex-parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.
>
> Black's Law Dictionary

This custody proceeding has been pending since November 1996. Discovery and depositions have been conducted. The Interim Order proceeded from the second status conference. An evaluation has been conducted. Both parties agreed to convert the 8 October 1997 trial date to a status conference. The Interim Order was not ex-parte and was within the court's inherent power, and, more specifically, its broad and independent powers to ensure that Marin's best interest is served.

Mrs. Casselli's claim of denial of *her* rights is premature and in disregard of *Marin's right to the legal and physical custody that is in her best interest*. Mrs. Casselli will have her day in court. Meanwhile, though, the court " . . . must pursue actively that course of conduct which

will be of the greatest benefit to the child." *Turner v. Turner*, 455 So. 2d 1374, 1378 (La. 1984). Sole custody for Mr. Casselli is that course.

Mrs. Casselli's allegation of error deals strictly with a state court ground (La. Code Civ. Proc. art. 3945). It is not for this Court to consider the correctness of the non-federal ground for the Louisiana Court's holding unless it is an obvious subterfuge to evade consideration of a federal issue. *Radio Station WOW v. Johnson*, 326 U.S. at 124. There is no subterfuge. This is a matter of State law and not this Court's concern.

III.

CONCLUSION

This Court does not have jurisdiction to review the judgment at issue because it is not a final judgment as contemplated by 28 U.S.C. § 1257. It is an interim custody order. The custody trial is set to be heard commencing 22 April 1998. This Court cannot have jurisdiction until custody is concluded.

Mrs. Casselli was not denied adequate due process under the circumstances because the trial court only temporarily divested her of legal custody and did not permanently and irrevocably deprive her of her parental rights. Given the circumstances, the State has not deprived Mrs. Casselli of any due process right which she may have.

The trial court did not contravene Louisiana Code Civ. Proc. art. 3945 because that article is not applicable.

Additionally, it is not for this Court to consider the correctness of the Louisiana court's holding regarding Louisiana law where it is not used as a subterfuge to evade consideration of a federal issue. The applicability of Louisiana Code Civ. Proc. art. 3945 is purely a matter of state law and not of concern to this Court.

Given the facts, it is incomprehensible to expect Mr. and Mrs. Casselli to consult one another and to "share" custody. The Louisiana court performed its paramount function, within its inherent, broad, and independent powers, in awarding Mr. Casselli sole custody pending the trial of his custody rule. Marin deserves no less.

For the foregoing reasons, this Court should deny Mrs. Casselli's petition for writ of certiorari.

Respectfully submitted,

LOWE, STEIN, HOFFMAN,
ALLWEISS & HAUVER
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APPENDIX "A"

24TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346

DONNA MADDEN, WIFE OF HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: FEB. 18, 1994 _____

DEPUTY CLERK

JOINT CUSTODY PLAN OF IMPLEMENTATION

Donna M. Casselli (hereinafter referred to as "Mother") and Henry Casselli, Jr. (hereinafter referred to as "Father"), submit the following plan of implementation for joint custody of their minor child, Marin Casselli:

A. CUSTODY:

The parties are both fit and proper persons to have the care, custody and control of the minor child of the marriage. The legal custody shall be joint and shared.

B. CONSULTATION CONCERNING CHILDREN:

Father and Mother shall consult together frequently by telephone or correspondence, if personal conference is impractical, in an effort to mutually agree concerning all decisions affecting the general health and welfare, education, and development of the minor child to the end that, insofar as possible, they may adopt a mutually harmonious policy concerning the child's upbringing. All major decisions shall be joint and shared. In the event of a

dispute concerning any such major decision, the parties shall either resort to mediation or file a rule to show cause.

C. NO ALIENATION OF AFFECTIONS:

Neither Father nor Mother shall attempt, or condone any attempt, directly or indirectly, by any artifice or subterfuge whatsoever, to estrange the child from the other party or the other's family, or to injure or impair the mutual love and affection of the child.

At all times the parties shall encourage and foster in the child sincere respect and affection for both parents, and shall not hamper the natural development of the child's love and respect for the other parent or that parent's family.

D. RECORDS AND INFORMATION:

Each party shall keep the other party advised as to any serious illness or other major developments concerning the child.

The parties agrees [sic] that each parent shall be entitled to immediate access from the other or from a third person to records and information pertaining to the minor child, including, but not limited to, medical, dental, health, school, or educational records.

Each of the parties agrees to keep the other party currently advised of the other's residence and business address, telephone numbers, and whereabouts on vacations with the child.

Each party shall be entitled to speak to the child by telephone at reasonable times and intervals when the

child is in the custody or subject to the control of the other party.

E. PARENTAL ACCESS:

(i) The parties agree that Mother will be designated as domiciliary parent.

(ii) The parties agree to forego adopting a rigid access schedule at this time, believing that it is in the best interest of their minor child that parental access be flexible depending on the circumstances at any given instance.

(iii) Mother's Day weekend will always be celebrated with Mother, and Father's Day weekend will always be celebrated with Father.

F. MODIFICATION:

The parties may agree to modification(s) of this Plan, and the judgment rendered in furtherance of it, but all such modifications, if meant to be of a permanent nature, shall be reduced to writing by the parties and filed with the Court.

G. NOTICE OF MOVING:

Neither parent shall move from the Greater Metropolitan New Orleans area without first giving sixty (60) days advance notice by certified mail, return receipt requested, to the other parent so that adequate adjustments can be made concerning custody, access and the costs and expenses of sharing transportation concerning access with the child, should the move actually take place.

If the parties cannot reach a voluntary agreement concerning the foregoing change of residence by one or both of them, the sixty (60) day period will give the Court adequate time to make a ruling in those circumstances which may differ from what is contemplated herein because of the proposed move.

H. EDUCATION:

The minor child will attend the educational facility agreed upon by the parties or as directed by the Court in the event the parties cannot agree.

I. SUPPORT:

Father agrees to help support the minor child as agreed upon between the parties or as ordered by this Honorable Court.

J. USE OF SURNAME:

Notwithstanding the possible remarriage of either party, the minor child shall continue to be known legally and publicly under the Father's surname, Casselli. They shall not, for any reason or purpose, assume the name of any subsequent spouse of either party or any other surname.

Gretna, La. this 18th day of February 1994.

MELVIN C. ZENO
JUDGE

/s/ Donna M. Casselli
DONNA M. CASSELLI

/s/ Henry Casselli, Jr.
HENRY CASSELLI, JR.

/s/ R. Scott Buhrer
R. Scott Buhrer
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APPENDIX "B"

24TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DRS-2

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

VS.

HENRY CASSELLI, JR.

FILED: NOV. 22, 1996 _____
DEPUTY CLERK

RULE TO SHOW CAUSE AND FOR CONTEMPT

NOW INTO COURT, through undersigned counsel, comes mover, Henry Casselli, Jr., and on suggesting to this Honorable Court that a Consent Judgment was entered into by the parties on February 18, 1994; and on further suggesting that it was in the best interest of the minor child of the marriage, Marin Casselli, that joint custody be awarded to the parties; defendant-in-rule, Donna M. Casselli was designated as domicilliary parent, subject to a joint custody implementation plan submitted by the parties to the Court, which provides that: "All major decisions shall be ***joint*** and ***shared***. In the event of a dispute concerning any such major decision, the parties shall resort to mediation or file a rule to show cause." Defendant-in-rule is attempting to usurp all powers and decision-making concerning the minor child in clear derogation of the joint custody implementation plan and the joint custody award. This is in violation of this Honorable Court's Order.

Also, without limitation, defendant-in-rule, Donna M. Casselli, is making it difficult for your mover, Henry Casselli, Jr., to enjoy his joint custody of the minor child, as she has placed a block on the telephone, making it impossible for Mr. Casselli to reach the minor child by telephone. On information and belief, defendant-in-rule may be taping his conversations with the minor child. Henry Casselli, Jr. should be allowed unmonitored telephone access to his child, and these actions also clearly derogate the Consent Judgment entered into by the parties on February 18, 1994.

Further, without limitation, the minor child, Marin Casselli, who is presently 15 years old, has expressed an intent to spend equal time with her father, your mover. Such access is in the minor's best interest. As these parties have joint custody of the child, there should be no reason why the child cannot spend approximately equal time with her father, and Henry Casselli, Jr., hereby requests that Donna M. Casselli show cause why this equal sharing should not be awarded to him.

Concerning equal sharing, Henry Casselli, Jr., respectfully requests that he and Donna M. Casselli alternate major holidays, thereby giving them equal time and access with the minor child, Marin Casselli, over all major holidays.

Henry Casselli, Jr., your mover, believes that defendant-in-rule has made derogatory statements about him, perhaps even to the minor child, and is directly or indirectly attempting to alienate the child's affections for him.

Mover, Henry Casselli, Jr., respectfully suggests to this Honorable Court that defendant-in-rule, Donna M.

Casselli should be ordered to show cause on a date and at a time to be set by this Honorable Court, why he should not be granted the relief he seeks. Further, your mover requests that defendant-in-rule show cause why she should not be held in contempt of this Court and ordered to pay attorney's fees and court costs incurred by mover in prosecution of this rule, since defendant-in-rule has acted in derogation of the Consent Judgment and joint custody implementation plan entered into by the parties.

Respectfully submitted,

LOWE, STEIN, HOFFMAN,
ALLWEISS & HAUVER

/s/ Paula H. Lee
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701 Poydras Street
New Orleans, Louisiana
70139-3600
(504) 581-2450
Attorneys for Henry C.
Casselli, Jr.

ORDER

Considering the above and foregoing:

IT IS ORDERED that defendant-in-rule, Donna M. Casselli, show cause on the 7th day of April, 1997, at 9 o'clock A.m., why she should not, in accordance with the Consent Judgment and joint custody implementation plan, allow mover, Henry Casselli, Jr., equal input on all decisions regarding the minor child, Marin Casselli; why

she should not immediately remove the call block feature from the phone and allow Henry Casselli, Jr., unrestricted and unmonitored access by telephone to the minor child; why Marin Casselli should not spend equal time with both parents; why the equal time with the minor child should not include alternate sharing of all major holidays; why Donna M. Casselli should not refrain from attempting to alienate the child's affections for your mover; why Donna M. Casselli should not be held in contempt of court for refusing to adhere to the Consent Judgment and joint implementation plan in failing and refusing to allow plaintiff-in-rule his proper input concerning all major decisions; and why Donna M. Casselli should not be required to pay the attorney's fees and court costs incurred by mover in the prosecution of this rule.

Gretna, Louisiana, this 25th day of November, 1996.

/s/ WALTER J. ROTHSCHILD
JUDGE

PLEASE SERVE:

Donna Madden Casselli
4015 N. Labarre Road
Metairie, Louisiana 70002

APPENDIX "C"

24TH JUDICIAL DISTRICT COURT FOR
THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346

DOMESTIC RELATIONS SECTION "TWO"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

versus

HENRY CASSELLI, JR.

FILED: '96 Dec. 13 PM 3 23 DEPUTY CLERK:____

INTERIM ORDER

This matter came on for hearing on December 12, 1996, on a request for a status conference by Henry Casselli, Jr. Attorneys for both parties were present.

After having a status conference with the parties, and discussing the situation with the minor child, Marin's, psychologist, which procedure was agreed upon by the parties,

IT IS ORDERED that Henry Casselli will have physical custody of the minor child, Marin. Marin will have visitation with her mother on the terms and conditions, as recommended by Marin's therapist, Dr. Baer, after consultation with Mrs. Casselli's therapist, Brenda Coleman, who will have input from Dr. Roniger, on a weekly basis, and otherwise on such terms, conditions and provisions as recommended by Dr. Baer.

IT IS FURTHER ORDERED that this Interim Order is entered without prejudice to the rights of either party and specifically without giving rise to any presumption in favor of either party.

GRETNA, Louisiana, this 13 day of December, 1996.

/s/ Walter J. Rothschild
JUDGE

READ AND APPROVED AS TO FORM
AND CONTENT AND SUBMITTED:

/s/ Robert C. Lowe
ROBERT C. LOWE
(8904)
One Shell Square,
Suite 3600
701 Poydras Street
New Orleans, LA
70139-3600
Phone (504) 581 2450
Attorneys for
Henry Casselli, Jr.

/s/ Leslie A. Bonin
LESLIE A. BONIN
(14090)
700 Camp Street
New Orleans, LA
70130
Phone: (504) 524-3306
Attorney for
Donna Casselli

APPENDIX "D"

24TH JUDICIAL DISTRICT COURT FOR
THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 Div. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: '97 Jan. 6 PM 2 17 _____
DEPUTY CLERK

SUPPLEMENTAL AND AMENDING RULE TO SHOW CAUSE AND FOR CONTEMPT

NOW INTO COURT, through undersigned counsel, comes movant, Henry Casselli, Jr., who respectfully supplements his Rule To Show Cause And For Contempt filed herein on 22 November 1996, by adding the following:

I.

By Consent Judgment of 18 February 1994 plaintiff and defendant were awarded joint custody of the minor child, Marin Casselli, with Donna M. Casselli designated as domiciliary parent subject to the Joint Custody Plan of Implementation submitted by the parties to the court on that same day.

II.

Movant further avers that the Joint Custody Plan Of Implementation of 18 February 1994 provides the following:

C. NO ALIENATION OF AFFECTIONS

> Neither Father nor Mother shall attempt, or condone any attempt, directly or indirectly, by any artifice or subterfuge whatsoever, to estrange the child from the other party or the other's family, or to injure or impair the mutual love and affection of the child.
>
> At all times the parties shall encourage and foster in the child sincere respect and affection for both parties, and shall not hamper the natural development of the child's love and respect for the other parent or that parent's family.

III.

Despite the prohibition on alienation of affections, defendant-in-rule, Donna M. Casselli, has attempted to estrange the child from movant, and to injure and impair the child's love and affection for movant by inventing and publicizing false allegations of abuse of the child by movant, thereby interfering with movant's free access, both verbally, and in person, to the minor child, all in violation of the prohibition on alienation of affections contained in the Joint Custody Implementation Plan referenced herein.

IV.

Movant further avers that, since the rendition of the 18 February 1994 Consent Judgment there has been a substantial change in circumstances materially affecting the welfare of the child such that it is in the best interest in [sic] the minor child that sole custody be awarded to Henry Casselli, Jr., or, alternatively, failing that, that if custody be maintained and Henry Casselli, Jr., be designated domiciliary parent. The change of circumstances includes, but is not limited to, Donna Madden Casselli's invention and continuing propagation of false allegations of abuse of the child by Henry Casselli, Jr., her threats to the child to have Henry Casselli, Jr., arrested, her complete failure to consult with Henry Casselli, Jr., regarding decisions affecting the minor child, her confrontational and inflammatory conduct toward Henry Casselli, Jr., the distress and embarrassment caused Henry Casselli, Jr., and the child, by Donna Madden Casselli's words and conduct, and her disregard for the child's needs and preferences.

WHEREFORE, movant, Henry Casselli, Jr., prays that his original Rule To Show Cause And For Contempt be supplemented accordingly, and that defendant-in-rule, Donna M. Casselli, be ordered to appear and show cause, if any she has or can, why he should not be granted the relief sought in his original Rule To Show Cause And For Contempt, this Supplemental And Amending Rule To Show Cause And For Contempt, and, additionally, why she should not be held in contempt of this Honorable Court and punished accordingly for her violation of the Joint Custody Implementation Plan of 18 February 1994.

Respectfully submitted,

LOWE, STEIN, HOFFMAN,
ALLWEISS & HAUVER

/s/ Suzette Marie Smith
ROBERT C. LOWE (8904)
SUZETTE MARIE SMITH (17806)
3600 One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139-3600
(504) 581-2450
Attorney for Henry Casselli, Jr.

ORDER

Considering the above and foregoing:

IT IS ORDERED that defendant-in-rule, Donna M. Casselli, appear and show cause, if any she has or can, on the 7th day of April, 1997, at 9:00 o'clock a.m., why movant should not be granted the relief requested in his original Rule To Show Cause And For Contempt and this Supplemental And Amending Rule To Show Cause And For Contempt, and why she should not be held in contempt of this Honorable Court and punished accordingly for her violation of the Joint Custody Implementation Plan of 18 February 1994.

Gretna, Louisiana, this 6 day of January, 1997.

/s/ M.F. Edwards
JUDGE

PLEASE SERVE:
Donna Madden Casselli
4015 N. Labarre Road
Metairie, Louisiana 70002

APPENDIX "E"

24TH JUDICIAL DISTRICT COURT FOR
THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 Div. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: '97 Apr. 4 AM 8 46 _____
DEPUTY CLERK

MOTION TO CONTINUE

NOW INTO COURT, through undersigned counsel, comes Henry Casselli, Jr., and on suggesting to this Honorable Court that Rules regarding custody and support are set for 7 April 1997, at 9:00 o'clock a.m.;

On further suggesting to this Honorable Court that the court-appointed expert, William Janzen, Ph.D., has requested additional time to complete his evaluations;

On further suggesting to this Honorable Court that undersigned counsel has made numerous attempts to contact opposing counsel without success.

On considering the above and foregoing:

IT IS ORDERED that the Rules regarding custody and support presently scheduled for 7 April 1997, at 9:00 o'clock a.m., be and the same is continued to the 27th day of May, 1997, at 9 o'clock a.m.

Gretna, Louisiana, this 4 day of April, 1997.

/s/ Walter J. Rothschild
JUDGE

Respectfully submitted,

LOWE, STEIN, HOFFMAN,
ALLWEISS & HAUVER

/s/ Suzette Marie Smith
ROBERT C. LOWE (8904)
SUZETTE MARIE SMITH (17806)
3600 One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139-3600
(504) 581-2450
Attorneys for Henry Casselli, Jr.

PLEASE SERVE:
Donna Madden Casselli
through her attorney of record:
Leslie A. Bonin, Esq.
700 Camp Street
New Orleans, Louisiana 70130

APPENDIX "F"

24TH JUDICIAL DISTRICT COURT FOR
THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 Div. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: '97 Oct. 4 PM 3: 11 _____
DEPUTY CLERK

JOINT MOTION AND ORDER TO CONTINUE

NOW INTO COURT, through undersigned counsel, come Donna Madden Casselli and Henry Casselli, Jr., and upon suggesting to this Honorable Court that Rules regarding custody and support are set for 8, 9 and 10 October 1997, at 9:00 a.m.;

On further suggesting to this Honorable Court that the court-appointed expert, William Janzen, Ph.D., issued his report on the evaluations on 1 October 1997, leaving counsel unable to fully complete discovery and prepare for court;

On considering the above and foregoing:

IT IS ORDERED that the Rules regarding custody and support presently scheduled for 8, 9 and 10 October, 1997, at 9:00 a.m., be and the same are hereby continued to the 22nd, 23rd & 24th days of April, 1998, at 10:00 o'clock a.m.

GRETNA LOUISIANA, this 8th day of October, 1997.

/s/ Walter J. Rothschild
JUDGE

Respectfully submitted,

LOWE, STEIN, HOFFMAN,
ALLWEISS & HAUVER

/s/ Suzette Marie Smith
ROBERT C. LOWE
(8904)
SUZETTE MARIE SMITH
(17806)
701 Poydras Street
– Ste 3600
New Orleans, Louisiana
70139-3600
(504) 581-2450
Attorneys for
Henry Casselli, Jr.

A TRUE COPY OF THE
ORIGINAL ON FILE
IN THIS OFFICE

/s/ Illegible
DEPUTY CLERK
24TH JUDICIAL
DISTRICT COURT
PARISH OF
JEFFERSON, LA.

/s/ Leslie A. Bonin
LESLIE A. BONIN (14090)
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 524-3305
Attorney for
Donna Madden Casselli

APPENDIX "G"

WILLIAM BRADFORD JANZEN, Ph.D.
A PROFESSIONAL PSYCHOLOGY CORPORATION
3621 RIDGELAKE DRIVE
SUITE 307
METAIRIE, LOUISIANA 70002
(504) 837-4332

CLINICAL PSYCHOLOGY **FAX (504) 831-3695**

September 29, 1997

The Honorable Walter J. Rothschild, Judge
Office of District Judges
24th JDC
Parish of Jefferson
Division A
Gretna, La. 70053

RE: MARIN CASSELLI
DONNA CASSELLI
HENRY CASSELLI
OUR REF NO 97074
DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.
VERSUS
HENRY CASSELLI, JR.
24TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON
DIVISION A, NO 450-346

Dear Judge Rothschild,

REASON FOR REFERRAL

As you know I was appointed by your court to perform psychological evaluations on the above captioned individuals in order to assist the court in addressing issues of custody and visitation. More specifically, the

mother, Donna Casselli, has made allegations that the father, Henry Casselli, has sexually abused their daughter, Marin Casselli. It is my understanding that Marin Casselli has denied that her father has sexually abused her. Apparently, the mother continues to make these allegations in the face of her daughter's denials. Marin Casselli was seen on April 15, 22, and 24, 1997 and on September 16, 1997. Donna Casselli was seen on April 23 and 28, 1997, May 26, 1997, and August 11, 1997. Henry Casselli was seen on April 8, 10, 16, and 28, 1997. Dana Casselli, the oldest daughter of Mr. Casselli and Ms. Casselli, was seen on September 16, 1997. She was not seen for a full evaluation but only to obtain information which might be relevant to the case.

HENRY CASSELLI

BACKGROUND INFORMATION

Henry Casselli presents as a 50 year old male who has completed two and a half years of art school and he is an artist. He has an art studio in New Orleans. Mr. Casselli lives in a two bedroom two bathroom home in New Orleans, Louisiana with his youngest daughter, Marin.

I explored with Mr. Casselli what the issue was in court and he stated that he was petitioning for sole custody of Marin. He indicated that he is filing for sole custody because of false allegations which Ms. Casselli made regarding Mr. Casselli sexually abusing Marin. He stated that Ms. Casselli has made some rather graphic allegations which have proven to be false. Mr. Casselli stated that he first became aware of the sexual abuse

allegations in May of 1996. Mr. Casselli indicate [sic] that he was aware of the fact that Ms. Casselli had taken Marin to Dr. Gail Baer. He stated that one evening in May of 1996 Marin came home from an appointment with Dr. Baer stating that Dr. Baer had asked her to tell him that there was no evidence of sexual abuse. He stated that this was the first time that he knew that there had been allegations of sexual abuse. Mr. Casselli stated that shortly thereafter he arranged an appointment with Dr. Baer who told him that "let me tell you point blank that if I thought there was a hint of sexual abuse I would have reported it."

According to Mr. Casselli Ms. Casselli had an altercation with the oldest daughter, Dana and her fiancee. According to Mr. Casselli his daughter told him that the mother became angry about something and stated "I'm dying and your father is fucking your sister." Mr. Casselli stated that Dana told him that the mother had told her that two out of three doctors had told her that she was dying. However, according to Mr. Casselli, Dana did not believe that the mother was dying. Because of these allegations of sexual abuse which Dr. Baer nor child protection have validated Mr. Casselli feels that it is in Marin's best interest for him to have sole custody so that the mother does not have any decision making power.

Mr. Casselli alleged that a psychological evaluation had been performed on Ms. Casselli indicating that she was diagnosed as a severe borderline, schizophrenic, and manic depressive. Allegedly, the report also indicated that she had a severe drug addiction with prescription drugs. Mr. Casselli indicated that throughout the evaluation Ms. Casselli would go through periods of ignoring

her hygiene for days and going on eating binges. He stated that after a period of time she would simply "snap out of it." Mr. Casselli stated that when Ms. Casselli would become depressed she would stop doing everything including not combing her hair. (modify statement about OCS) Apparently this situation became very critical around Thanksgiving of 1996. Apparently Ms. Casselli was making very strong allegations of sexual abuse at that time.

Mr. Casselli reported that at the present time Marin has visits with her mother every other weekend from after school on Thursday until Monday morning.

I explored with Mr. Casselli his perception of his history with Ms. Casselli. He stated that he met her through a mutual friend at a time when she was going through a divorce. They met in 1969 and they were married on June 5, 1971. They decided to get married within three weeks of meeting. However, they set the date eighteen months into the future. There were no obvious or serious problems during the dating period. Mr. Casselli's perception is that after the children were born Ms. Casselli did not engage in joint parenting with him. His perception was that she undermined any attempts to set limits. This is similar to the information which I obtained from the older daughter, Dana. Mr. Casselli stated that eventually this caused him sufficient irritation that he basically withdrew from the marriage. He also stated that by the mid 1980's Ms. Casselli was taking numerous medications which included excessive use of Tylenol, Sudifed to energy [sic] herself, and then Eleval to calm herself down in the evening. Thus, from Mr. Casselli's

perspective these unresolved issues slowly resulted in a withdrawal of physical and emotional affection.

PSYCHOLOGICAL STATUS

Mental Status. The mental status exam indicated that Mr. Casselli was oriented in all areas. He did not present as depressed or anxious and he did not admit to any problems with depression or anxiety. He does not have a history of psychosis and he did not evidence any symptoms of psychosis during the evaluation. Mr. Casselli appears to be functioning in the above average range of intelligence. His affect was appropriate given the content of the evaluation.

Social History. Mr. Casselli's social history indicates that he grew up in New Orleans, Louisiana with both parents. He emphasized the fact that his father had a fifth grade education and his mother a third grade education. He described his father as being very strict. He felt that he had a normal relationship with his mother. However, he stated that she had "some bouts with mental problems." She was hospitalized several times in psychiatric inpatient facilities when Mr. Casselli was between the ages of fifteen and eighteen. He stated that as a young adult he decided that he did not want a relationship with his parents because of their attitude. He stated that he continues to choose not to have a relationship with his father. His mother died when she was in her early forties. Mr. Casselli has two brothers and one sister. One brother is deceased. Mr. Casselli does not have a relationship with his brother or his sister. Thus, it appears that Mr. Casselli is completely alienated from his family.

Mr. Casselli did not have any type of problems throughout school. As an adolescent he did not have any emotional or behavioral problems. AS an adult he has never been arrested, he has never had a DWI, he has never had a chemical dependency problem, and he has never been in inpatient psychiatric facility. His marriage to Ms. Casselli has been his only marriage. Currently he is dating a woman and he feels that he has a good relationship with her. He stated that Ms. Casselli has called this woman a "slut and whore."

Psychological Testing. The type of profile which Mr. Casselli obtained is frequently associated with individuals who may be undergoing a mild situational depression. His profile is not associated with any other type of psychopathology.

Psychological Dynamics. On the basis of my evaluation of Mr. Casselli it appears that he is currently functioning within normal limits. He may be experiencing some mild depression with regard to the current custody dispute. Otherwise his psychological functioning appears to be intact and I did not obtain any evidence to suggest that he would be an unfit parent.

DONNA M. CASSELLI

BACKGROUND INFORMATION

Donna M. Casselli presents as a 48 year old woman who has a Bachelor of Arts Degree from UNO and she has also completed two semesters of graduate school at UNO. Currently she is a substitute teacher at Country Day. Ms. Casselli lives in Metairie, Louisiana in [sic] three

bedroom two and a half bathroom home. She stated that she lives there alone except when Marin is with her.

I explored with Ms. Casselli what the issue was in court and she stated "my ex is filing for sole custody and I'm objecting. I want joint custody and I would prefer to remain as domiciliary parent." She stated that currently there is a temporary interim order which has given Mr. Casselli physical custody of Marin. She stated that she visits with Marin every other weekend from Thursday after school until Monday morning. She stated that the interim order has been in effect since December 12, 1996. She volunteered "it was solely based on Dr. Gail Baer's recommendation." I requested that Ms. Casselli explain why there was an order given [sic] Mr. Casselli temporary custody. She stated "there was an unfortunate incident which was very traumatic to Marin and the father. The traumatic incident was that I had some difficulty as a result of sleeplessness and medication imbalance. I had a sleeping problem and I couldn't sleep more than an hour per night." She stated that she had been taking Prozac for numerous years. At some point she went to see Dr. Roeniger, a psychiatrist, who placed her on new medications. She stated that apparently she was allergic to both medications but she did not call Dr. Roeniger for an entire week. She stated that she had been on Prozac for about seven years. Ms. Casselli went on by stating "I had mental confusion, I had sleeplessness, unfortunately I misinterpreted some things and became hysterical." She stated that she went to see Dr. Roeniger for the first time on November 18, 1996. She indicated that Marin had asked her some questions about HIV and pregnancy testing. She stated "I did have concerns about the father's

interactions with Marin. He has always been physically affectionate. When Marin became an adolescent my father shared some things with me." She state [sic] that her father pointed out to her that Mr. Casselli frequently "patted Marin on her butt, kissed her on the lips, and rubbed her thighs when she was in shorts." She went on to state "but because he was so physically demonstrative I thought nothing of it until my father mentioned it." She stated "I tried to talk to him and I said it may give her confusing messages. He told me to mind my own messages and go to hell." Ms. Casselli continued with "I approached Marin about what he was doing being inappropriate, he is thinking of you as a little girl, but she was so happy to have his attention she set no limits." She stated that she was concerned because while she was married to Mr. Casselli he was physically abusive with her as well as the oldest daughter, Dana. She also alleged that Mr. Casselli was emotionally abusive with Dana. In addition Ms. Casselli alleged that Mr. Casselli was rageful and would frequently destroy such things as furniture, art work, and plants.

Ms. Casselli blamed her sleeplessness and the medication for the allegations. She stated "because of my mental confusion and my medication being bad I felt convinced he had sexually abused her. I interpreted what she said about HIV and pregnancy testing as an attempt on her part to tell me that she was sexually abused. I'm sorry it caused problems for both of them." She admitted that she became hysterical about the entire situation. Ms. Casselli insisted that this was the only time that her judgment was impaired with regard to Marin and Mr. Casselli. She stated "I'm ready to put the allegations

behind me but as a mother I have concerns. I believe that the type of touching is inappropriate and it could give her the wrong message. I suppose it could go beyond that." Thus, it appears that Ms. Casselli continues to have specific concerns about the interactions which occur between Mr. Casselli and Marin. She stated "I have other concerns. Marin's father often would keep her on the phone for two to three hours. He used her as an emotional confidant about financial and legal issues. He would call her repeatedly at 11:00 P.M. and keep her on the phone until 1:00 A.M. or 2:00 A.M. I couldn't wake her the next morning." She stated "he ignored my attempts to set limits with him." She stated "it got to the point that my therapist and I put on call block. Sometimes I took the phone off the hook but my parents are in their seventies." At the same time Ms. Casselli stated "I want her to have a good relationship with her father." She also alleged that Mr. Casselli encouraged Marin to sneak phone calls to him. She stated "he told her who the hell does your mother think she is to set limits with us." When I saw Ms. Casselli for the final time on August 11, 1997 she continued to believe that the father's interactions with Marin were inappropriate. However, she stated "there are no sex abuse allegations at the present time."

Mr. Casselli had alleged that Ms. Casselli had always insisted that Marin sleep with them until she was twelve or thirteen years of age. Ms. Casselli stated "I realize now that it was a mistake. I realize that was one of our weaknesses. I felt she was little. I know that was wrong for Marin and Henry. If she wasn't in bed with us I would sometimes lie in bed with her. It stopped when she was about twelve or thirteen." In summary, at the present

time Ms. Casselli is not making any specific sex abuse allegations but she continues to insist that Mr. Casselli does not set appropriate boundaries in his physical interactions with Marin.

I explored with Ms. Casselli her perception of her history with Mr. Casselli. She stated that they met through a mutual friend when she was twenty or twenty one and Mr. Casselli was twenty two or twenty three. They began dating in 1969 and married on June 5, 1971. They separated in the summer of 1989 and they were divorced in 1994. She described the dating period as being great. She also described the four years prior to Dana's birth as being good. According to Ms. Casselli they did not have any serious problems after Dana's birth. She also stated that the first few years after Marin's birth were good. She did allege that sometimes Mr. Casselli was inappropriate in his physical punishment of Dana. She stated "that is when I first saw an indication of problems. It was with child rearing." She described Mr. Casselli as being "rigid, authoritarian and very didactic." According to Ms. Casselli problems didn't develop until Dana's preadolescence. She stated "he didn't or couldn't understand independence. She didn't want to be kissed in the car pool and he was offended. There were many fights between him and me and her." She stated that Mr. Casselli developed many resentments because she did not support his opinions. She stated that Mr. Casselli's anger caused a distancing between them. She stated that things continued to deteriorate until the separation in 1989.

PSYCHOLOGICAL STATUS

Mental Status. The mental status exam indicated that Ms. Casselli was oriented in all areas. She did at times have a tendency to become somewhat distracted and began to talk about unrelated events. She did appear to have some difficulty maintaining focus on the specific topic. Ms. Casselli's affect given the circumstances of the evaluation appeared to be inappropriate at times. She presented as being extremely friendly, happy, and jovial. All of this gave her an image of being somewhat superficial at times. Ms. Casselli admitted that she has had problems with depression in the past. She stated that she began taking Prozac about seven or eight years ago and she has continued to take it since then. She has also been in treatment with a social worker for the past three years on a twice per week basis. She stated that she has never been hospitalized in a psychiatric facility, although she did admit that she voluntarily went to East Jefferson Hospital for a twenty three hour stay around Thanksgiving of 1996. She did not evidence any symptoms of psychosis during the evaluation. She appears to be functioning in the above average range of intelligence.

Social History. Ms. Casselli's social history indicates that she grew up in New Orleans, Louisiana with both parents. She stated that she had a very good relationship with her father and continues to do so. She described her relationship with her mother as being very good and she continues to feel that she has a good relationship with her mother. Ms. Casselli has one sister and no brothers. She stated that her sister is doing well but the relationship is somewhat strained because they have different priorities.

Ms. Casselli denied that she had any type of problems throughout school. As an adolescent she did not have any emotional or behavioral problems. As an adult she has never been arrested, she has never had a DWI, she has never had a chemical dependency problem, and she has never been in a mental institution. Thus, according to the information which Ms. Casselli gave me it appears that her social history is within normal limits.

Psychological Testing. On the Minnesota Multiphasic Personality Inventory Ms. Casselli obtained a highly guarded profile and thus it is unlikely that her profile is valid. Ms. Casselli attempted to present herself in the most favorable manner possible. However, she did this to such an extent that she didn't even admit to minor problems and faults which most people readily admit to. Therefore, her profile cannot be interpreted.

Psychological Dynamics. My comments in this section are based on the information which I obtained, my review of Dr. Talaate Sassan Mohamed's deposition, Dr. Gerald Wiener's psychological evaluation, Ms. Brenda R. Coleman's letter, and Dr. Gayle R. Baer's letter. Dr. Mohamed in his deposition stated that Ms. Casselli has a histrionic personality disorder with borderline features. Dr. Wiener stated that "projection and denial seem to be hallmarks of a borderline personality disorder." Dr. Wiener also concluded "the patient demonstrated difficulties with sexual identity – yet another feature associated with a borderline personality disorder." Under diagnostic considerations Dr. Wiener states "the closest diagnosis that fits this patient is that of a severe personality disorder. In association with this, there are many other character defects to be noted, including histrionic

trends, narcissistic trends, and an underlying depression. These are rather serious characterological problems and it is not uncommon for individuals with such diagnoses to periodically experience character structure decompensation." My impression of Ms. Casselli at the present time is that she has realized that the allegations which she made have created some serious problems for her. Thus, she apologizes and states that she no longer believes that the father sexually abused Marin. However, at the same time she adds that the father's behavior with Marin is inappropriate and she continues to have serious concerns about the father's relationship with Marin, and she feels that this inappropriate behavior could result in more serious acting out by the father. She continues to believe this despite the fact that Marin has at no time admitted to anything that she is being sexually abused or that the father is behaving inappropriately with her. Such continued conclusions by Ms. Casselli would be consistent with continued personality disorder problems.

RESPONSE TO ALLEGATIONS

I explored some of the allegations which had been made by Mr. Casselli. Mr. Casselli had alleged that Ms. Casselli had accused him of making Marin masturbate. She denied this and stated that it must be his misunderstanding. She also stated that she did not believe that Mr. Casselli had sexual intercourse with Marin. She denied that Dana was her favorite daughter.

I explored with Ms. Casselli why she and Dana are currently not communicating or at best have a strained relationship. She stated that she perceives some integrity

issues with Dana's fiancee. She stated "he wanted me to do some unethical things. He wanted someone to do a paper for him. Jason wanted Judge Cusimano to write a letter for him. There were some other things which concerned me." She denied that she told Dana that she was dying. She also denied that she told Dana "your father is fucking your sister." She stated that she has never been diagnosed as severe borderline, she has never been diagnosed as schizophrenic, and she stated that the manic depressive diagnosis was a self diagnosis. She denied that she would go through extended periods of time ignoring her hygiene. She did state that on one occasion she didn't feel well and she stayed in bed for two or three days.

MARIN CASSELLI

BACKGROUND INFORMATION

Marin Casselli presents as a 15 year, 11 month old female. She is in the tenth grade for the academic year 1997-98. She has never failed a grade. She appears to be keeping a B average. She does not appear to have any behavioral problems in school and she has never been suspended. She reports that she relates well with her friends, peers, and teachers. She is involved in numerous extracurricular activities which include volleyball, basketball, soft ball, piano, and violin. Currently Marin lives with her father and visits with her mother every other weekend from Thursday after school until Monday morning.

Marin indicated that her perception of her parents has always been that they did not get along and argued constantly. She stated that even though she suspected

that they would eventually get a separation it was still upsetting to her when she discovered that in fact her parents were separated. She stated that she has never fantasized about her parents' reconciling as she is convinced that that could never happen. Marin disclosed that prior to the current arrangement the mother was the domiciliary parent and she would visit with her father whenever he would call.

I explored with Marin why she went to live with her father in December of 1996 and she stated "my mother wasn't getting much sleep and she was not taking her medicine. She began having delusions that he was abusing me." Marin was aware of the fact that the mother was alleging sexual abuse. She stated "I was baffled." Apparently Marin found out that there were sexual abuse allegations prior to the summer of 1996. She stated that around October of 1996 the situation worsened. She stated "I got hints from Dr. Baer she was still believing I was being sexually abused." She stated that she would ask her mother "why are you doing this and she would say it was in your best interest." She went on with "the situation got worse and she said I told her I was going to commit suicide. I never did. She called OCS." She stated that the mother called OCS in November of 1996 and they came out about three weeks prior to her first session with me in April of 1997. She stated that the social worker from OCS wanted to talk about the sexual abuse allegations and she stated that she had not been sexually abused. My impression of Marin after the first session was that she was somewhat withdrawn and defensive. It was rather obvious that she was upset about having to talk about the allegations.

Marin indicated that she had a good relationship with both of her parents prior to her parents' separation. She described her mother as having been kind, friendly, and affectionate, but somewhat overprotective. She described her father as kind, sensitive, and generous. She stated that sometimes she did things with the entire family and sometimes just with each parent. Marin indicated that despite the problems between her parents and the allegations she is able to concentrate on school issues.

I explored some of the allegations which the mother had made with Marin. She described her father as being affectionate. She stated that her father does not pat her on the buttocks. She stated that prior to thirteen her father did kiss her on the lips but he has not done so since she turned thirteen. She stated "now we kiss on the cheek." She also stated that she has no recollection of being patted on the leg. She also stated that she does not have a recollection of her mother attempting to talk to her about the father's behavior. She also stated that she did not recall any type of physical violence. She also denied that she went to her mother to discuss HIV, Aids, or pregnancy testing. She stated that she does not have the type of relationship with mother that she would discuss those things with her. As a matter of fact she stated "it's not something I would discuss with either parent."

I explored with Marin the allegations that the father kept her up late at night and as a result she couldn't get up in the morning. She denied this and stated that when she was in the eighth grade she sometimes had trouble getting up in the morning but it was because she was involved in so many extracurricular activities. She admitted that the mother placed a call block so that the father

could not call her. She stated "she kept setting rules, she did it in October and November of 1996. She was taping conversations." She went on to add "I usually called my father nightly before I went to sleep. I could call him but he couldn't call me. It was ridiculous and unfair. She said it was in my best interest. I never felt imposed on by my father." I also explored with her if the father encouraged her to sneak phone calls and she denied it.

When I saw Marin for the last time she indicated that she had a good relationship with her father and her mother. She stated that she did not have any concerns about either parent at the present time.

PSYCHOLOGICAL STATUS

Mental Status. At the present time Marin appears to be functioning in a psychologically healthy manner. There is no evidence for depression or anxiety. She does appear to be rather protective and defensive of both parents. My impression is that she wishes this entire situation would simply disappear and she would not need to deal with it. She was rather guarded and defended during all four sessions.

Psychological Testing. On the Minnesota Multiphasic Personalty [sic] Inventory Marin obtained a valid profile. All of the clinical scales were within normal limits. There was no evidence for emotional distress, characterological problems, or psychosis. Her defenses appear to be intact. Marin's guardedness and defensiveness also appeared on the sentence completion test as she made absolutely no mention of her parents or the current situation.

DANA CASSELLI

BACKGROUND INFORMATION

Dana Casselli presents as a 22 year old female who is a senior in college. She indicated that she intends to apply to law school after she graduates. I explored with Dana if she understood the purpose of the interview and she stated "it's basically to answer any questions about the sexual abuse allegations." She stated that she first began to hear about the sex abuse allegations in September or October of 1995. She stated "it all began over the phone. She called constantly. It began with your father is sexually abusing your sister." She stated that as the mother continued to make the allegations they became more graphic. She stated that the mother stated "your father is fucking your sister" on two occasions. Once is February or March of 1996 and once in May of 1996." She stated that on one occasion she stated "you don't even care your father is fucking your sister." She stated that this occurred in May of 1996. She also stated that in October of 1995 the mother told her that the father was sleeping in the same bed with Marin. She stated that during one of these telephone conversations the mother stated "do you really believe that selfish man will sleep on a couch when he can sleep in a queen size bed with your sister." Dana also stated that on one occasion the mother told her about finding Marin's underwear with blood and her father's semen in it. Dana stated sometimes "she would call and say how proud of herself she was that she told him to stay in his corner and play with himself. She said how in another conversation he enjoys playing with Marin's nipples." She stated that her mother would call two and three times per day to tell her about

these things. Dana stated that in March of 1996 her mother also alleged that Mr. Casselli had sex with men and animals in addition to having sex with prostitutes. She stated that her mother had told her "we have to do whatever we can to keep your father from your sister." Dana also stated that on one occasion the mother told her that she was dying of liver or kidney cancer.

I also briefly discussed her relationship with her father as a teenager. She stated "she helped turn my father and me against each other." She stated that whenever the father would set limits with her such as not allowing her to buy a new outfit she would undermine him. As an other example she stated that her mother had always promised her a black BMW when she got her drivers license. She stated that the mother finally told her "your father said he would divorce me if I got you a car." She stated that whenever the mother could not buy her something she would always say "it is your bastard father."

CONCLUSIONS AND RECOMMENDATIONS

On the basis of my assessment of this case I can make the following conclusions.

1. Ms. Casselli's allegations that Mr. Casselli has sexually abused Marin Casselli cannot be validated on the available information. Marin did not give me any information to indicate that she has been sexually abused, Marin did not give Dr. Baer any information to suggest that she has been sexually abused, and it is my understanding that OCS has dropped the case.

2. Mr. Casselli appears to be functioning within normal limits psychologically at the present time and there is no evidence to indicate that he is engaging in any behavior which would cause Marin any type of problems.

3. Ms. Casselli appears to have had psychological problems for an extended period of time. She has been diagnosed as histrionic personality disorder with borderline features, and in a psychological evaluation she was diagnosed as probably suffering from a borderline personality disorder. There have also been indications that she can experience some rather severe depression. It appears that Ms. Casselli began making allegations of sexual abuse as early as October of 1995. The fact that she would continue to make sex abuse allegations even though there is no evidence of sexual abuse by the father against the daughter would tend to suggest that her character structure was probably decompensating at that time. I continue to be concerned that Ms. Casselli rather strongly believes that the father behaves inappropriately with Marin and as a result other things could happen. The implication being that the father could act out sexually with Marin. This would tend to suggest that if Ms. Casselli should experience even mild to moderate stress she might again begin to believe that sexual abuse is occurring. The information which Dana gave me suggests that a rather insidious personality decompensation was well in process by at least October of 1995, and very likely for quite some time prior to that. Given such serious

personality decompensation intense long term psychotherapy would be required for recovery. With serious personality disorders recovery sometimes never occurs. Given Ms. Casselli's continued beliefs it does not appear that her characterological problems have been resolved.

4. On the surface it appears that Marin is coping with the situation rather well. However, it is rather evident that she is pained and possibly even traumatized by this situation. She is attempting to cope with the situation by withdrawing from it and almost behaving as if the custody dispute and the allegations are not occurring.

On the basis of my conclusions I make the following recommendations.

1. It would appear to be in Marin's best interest if the father had sole custody. Ms. Casselli continues to believe that the father behaves inappropriately with Marin. The type of behavior which she considers inappropriate has been denied by Marin to exist. Unfortunately what Ms. Casselli believes to be occurring would be a precursor to full blown sexual abuse allegations. I do not feel that under those circumstances it would be possible for Mr. Casselli and Ms. Casselli to jointly make decisions which would be in Marin's best interest. I would also recommend that the current visitation arrangement remain in place. In other words, I would recommend that the mother continue having visits with Marin every other week from Thursday after school until Monday morning. Major holidays can be alternated. I

spoke with Dr. Baer and she indicated that the shared custody arrangement during the summer months did not cause Marin any problems. Of course, it also appears that Marin was gone on various trips for almost half the summer. Nonetheless, if the situation does not deteriorate then it may be possible for the parents to have a shared custody arrangement during the summer of 1998 with the father having domiciliary status.

2. I would recommend that Ms. Casselli continue in counselling to help her cope with her own problems.

3. I would also recommend that Marin continue in counselling with Dr. Baer.

4. I would also recommend that before the shared physical custody arrangement be implemented for the summer of 1998 all the parties return for a brief assessment to determine if in fact that would be in Marin's best interest.

If I may be of any further assistance to you in this matter, please feel free to contact me.

Very truly yours,

/s/ William B. Janzen, Ph.D.
William B. Janzen, Ph.D.

WBJ/sb
cc: Ms. Leslie A. Bonin
Attorney at Law
700 Camp Street
New Orleans, La. 70130

Ms. Suzette Marie Smith
Attorney at Law
One Shell Square
Suite 3600
701 Poydras Street
New Orleans, La. 70139-3600

APPENDIX "H"
EXCERPTS FROM THE 27 AUGUST 1997 DEPOSITION OF MRS. CASSELLI

Mrs. Casselli:

I don't want to give you an inaccurate response because I do pride myself on my integrity . . .

27 August 1997 Deposition of Mrs. Casselli, p. 10.

* * *

Mrs. Casselli:

My mental health is excellent at present.

Id., p. 15.

* * *

Question (by Ms. Smith): So your mental health is excellent; therefore, you would consider yourself lucid today?

Answer (by Mrs. Casselli): Yes.

Question: And you're presently able to distinguish truth from lies?

Answer: Yes.

Question: And you are able to perceive reality?

Answer: Yes.

Question: Are you aware of anything that would diminish your ability to give truthful answers here today?

Answer: No.

Id., pp. 16-17.

(Mrs. Casselli had testified that she "monitored" (*i.e.*, taped) telephone conversations between Mr. Casselli and Marin):

Question (by Ms. Smith): Where are those tapes now?

Answer (by Mrs. Casselli): In a safe place.

Question: Leslie?

Ms. Bonin: I have no idea where the tapes are.

Question (by Ms. Smith): Where are the tapes, ma'am?

Ms. Smith: I meant would you talk to her about answering the question.

Ms. Bonin: We will discuss it at the lunch break and get back to you after that.

Ms. Smith: I want an answer to my question, Leslie. I don't have to wait until after lunch. I want to know where the tapes are.

Mrs. Casselli: The answer to your question is, Ms. Smith, those tapes are in a safe place.

Question: And what is that safe place, ma'am?

Answer: I'm not obligated to discuss that with you.

Question: I'm afraid you are, ma'am, and I think your attorney –

Ms. Smith: I don't want to wait. I want an answer. This is where I am in my

deposition. I want to move along. You know she has to tell me where the tapes are. Why are we going to play games, not between you and me, I mean.

Ms. Bonin: Just calm down. I mean, I don't see – what difference does it make? Tell her where the tapes are.

Mrs. Casselli: (No response)

Ms. Smith: Leslie?

Mrs. Casselli: They are in a safe place.

Question (by Ms. Smith): Where are the tapes, ma'am? Ma'am, your attorney has already directed you to answer the question.

Ms. Bonin: Let me step outside with her.

Ms. Smith: Sure. Would you like us to step out?

Ms. Bonin: That's cool, too.

Ms. Smith: We will step out.

(Off-the-record)

Mrs. Casselli: Okay. I'm assuming – I'll clarify. The tapes that involve many conversations between Henry Casselli and his – the adultery tapes were given to Max Nathan and he destroyed them it's my understanding. The tapes of conversations that are monitored, Marin

and her father, I have them in my possession.

Question (by Ms. Smith): At your home?

Answer (by Mrs. Casselli): Uh-huh (affirmative expression).

Question: How many tapes are there?

Answer: I don't know. A lot.

Question: Over ten?

Answer: Over ten.

Question: Over 20?

Answer: Over 20.

Question: Over 30?

Answer: Lots. You know, I've never counted them but lots.

Id., pp. 32-35.

(Regarding the panties which Mrs. Casselli had reported to Nurse Beltz that she had):

Question (by Ms. Smith): Did you have any physical evidence or anything tangible to indicate to you that Marin was being sexually abused by Mr. Casselli?

Answer (by Mrs. Casselli): I observed that often times there – Marin was having a lot of bleeding, vaginal bleeding, and I had

always just assumed because she was a young girl and they don't always have regular periods and that kind of thing but I remember around that certain period of time becoming, you know, alarmed by it.

Question: And you saved those panties?

Answer: I think I did for a while and then I ended up just throwing everything out, and there was also sometimes discharge.

Id. at p. 91.

(Regarding an alleged audio tape of Mr. Casselli discussing Marin's nipples and masturbating):

Question (by Ms. Smith): You also told Nurse Wendy in November of 1996 that you had a tape of Mr. Casselli discussing Marin's nipples and her masturbating. Isn't that true?

Answer (by Mrs. Casselli): I believe that was true but what you are quoting is not accurate. I believe I told her that I had a tape where he discussed her nipples and his masturbation not the child's so I think perhaps it was

recorded inaccurately in the medical chart.

Question: And you told Nurse Wendy that you had given the tape to the child advocate, Leslie Bonin; isn't that correct?

Answer: I don't recall what I told her about that.

Question: Where is that tape now?

Answer: I don't have that tape.

Question: Who has the tape?

Answer: I don't know.

Question: What did you do with the tape?

Answer: I do not know.

Question: What did you do with it?

Answer: I do not know if I have that tape or not or if someone else has that tape or not. I am not sure, and I don't think it's fair to say unless I would have an opportunity to check. Okay?

Question: When was the last time you had the tape?

Answer: It was a while ago, but I don't recall.

Question: 1997?

Answer: I don't recall.

Question: 1996?

Answer: I don't – honestly don't recall.

Question: For whom have you played this tape?

Answer: I have discussed the content of this tape with other people. I do not recall for whom I have played the tape.

Question: Is the tape lost?

Answer: I have to look for it and then I can tell you.

Question: Did you ever give the tape to Leslie Bonin?

Answer: I don't recall if I gave Leslie Bonin that tape or not. You know, I'm lucky if she gets her voice mails from me she's so busy.

Ms. Bonin: I honestly don't remember. I don't remember getting a tape.

Ms. Smith: I've subpoenaed it.

Ms. Bonin: Yeah. Just so you know now.

* * *

Ms. Smith: I sent a request for production.

* * *

Question (by Ms. Smith): Why would you let anyone else have possession of a tape that could be so potentially humiliating and embarrassing to your daughter?

Answer (by Mrs. Casselli): Why would I let anyone else? Only if that person were involved in my child's life and should be aware of what was going on.

Question: And who are the people who fit that category that you just described?

Answer: Well, I would think – if you want to know about that particular tape, I am not sure if I have that tape or not. I can look for that tape, but I certainly would think it would be appropriate for a child's therapist to have such a tape.

Question: Did you give it to Dr. Baer?

Answer: I don't recall giving that tape to Dr. Baer.

Question: Did you give it to Brenda Coleman?

Answer: No. Brenda – Brenda – I would tell Brenda about the content of some tapes.

Question: Did you turn it over to the police?

Answer: No. I never called the police.

Question: Did you give it to Child Protection?

Answer: No. I never called Child Protection.

Question: Did you let your parents listen to it?

Answer: My mother was not – she's – she cares about her grandchildren but she does not want to have to listen to that kind of thing. As to my father, I don't recall if he listened to it or not. He – I do not know. Okay?

Question: When was this test supposedly made?

Answer: I don't recall the date of it either. It was after – certainly after the divorce and all of that. I can't tell you if it was '95 or '96. My guess would be close to '96, but I'm not sure.

Question: Now, ma'am, this is pretty damning tape. I have a hard time understanding what you would have done with this tape. It's not exactly the sort of tape that one would pass around.

Answer: No.

Question: Are you sure this tape ever existed, or could this be one of your lapses with reality?

Answer: I felt that this tape existed. Okay? I don't pass things like that around. I don't enjoy causing pain or humiliation to other people even an ex-husband, and I have expressed that to Mr. Casselli. I am very sorry for any pain or humiliation that was caused to him or Marin. That was not my intent at all.

Question: You felt this tape existed but you don't know where it is or who might have it or if it's at your house. You are not even sure it existed?

Answer: I have some tapes at my house. I haven't listened to anything like that in a long time. It is not pleasant to have to listen to those kinds of things. Okay?

Question: Are you certain this tape ever existed? This is a serious tape. We are not talking about an answering machine message. You are accusing this man of sexual abuse. Did this tape exist? Yes or no.

Answer: I think it did exist. I would have to look where I have tapes and play it and see. Okay? That I'm – I'm giving you my perception.

Question: You think it existed. You're concerned about Marin. You are concerned about inappropriate activity, but you don't even know where the tape is.

Answer: I know I have tapes at home.

Question: But you don't know where this tape is. You don't know if you gave it to somebody.

Id., pp. 104-109.

APPENDIX "I"

24TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIV. "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: _____ _____
DEPUTY CLERK

REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Donna M. Casselli
Through her attorney of record:
Leslie A. Bonin, Esq.
700 Camp St.
New Orleans, LA 70130

Defendant, Henry Casselli, Jr., hereby requests that plaintiff, Donna M. Casselli, produce the following documents, pursuant to Articles 1461 and 1462 of the Louisiana Code of Civil Procedure, for inspection and copying by plaintiff or plaintiff's attorneys, at the offices of LOWE, STEIN, HOFFMAN, ALLWEISS & HAUVER, 3600 One Shell Square, 701 Poydras Street, New Orleans, Louisiana, 70139-3600, within fifteen (15) days of service hereof, to wit:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

Please produce any and all tapes, audio and/or video, of Henry Casselli and/or Marin Casselli in your possession or subject to your control, including, but not limited to, the tape which you reported to Wendy Beltz, L.P.N., in which Henry Casselli allegedly discusses your minor daughter's nipples and her masturbation.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

Please produce all notes and letters in your possession or subject to your control which you believe or believed are indicative of Marin's suicidal thoughts, ideation, or intent, including, but not limited to, the suicidal notes and letters which you reported to Wendy Beltz, L.P.N., that you had found in Marin's room.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

Please produce all of Marin's soiled or stained underwear which you reported to Wendy Beltz, L.P.N., that you had in your posession [sic] or subject to your control.

Respectfully submitted,

LOWE, STEIN, HOFFMAN,
ALLWEISS & HAUVER

/s/ Suzette Marie Smith
ROBERT C. LOWE (8904)
SUZETTE MARIE SMITH
(17806)
3600 One Shell Square
701 Poydras Street
New Orleans, Louisiana
70139-3600
(504) 581-2450
Attorneys for
Henry Casselli, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record to this proceeding by hand delivery, by telephonic facsimile transmissions, Federal Express, or by placing copy in the United States Mail, certified return receipt requested or first class postage prepaid and properly addressed this 27th day of August, 1997.

/s/ Suzette Marie Smith

APPENDIX "J"

24TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIVISION "A"

DONNA MADDEN, WIFE OF HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: _____ _____
DEPUTY CLERK

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Donna Madden Casselli, and in response to the Request For Production Of Documents filed herein on behalf of Defendant, Henry Casselli, Jr., respectfully represents that:

REQUEST NUMBER ONE:

Please produce any and all tapes, audio and/or video, of Henry Casselli and/or Marin Casselli in your possession or subject to your control including but not limited to the tape which you reported to Wendy Beltz, L.P.N., in which Henry Casselli allegedly discussed your minor daughter's nippes [sic] and her masturbation.

RESPONSE TO REQUEST NUMBER ONE:

Objection, irrelevant for the reasons discussed in Ms. Casselli's deposition of August 27, 1997. Further,

there were and are no tapes, audio or visual, of Henry Casselli, Jr. or Marin Casselli.

REQUEST NUMBER TWO:

Please produce all notes and letters in your possession or subject to your control which you believe or believed are indicative of Marin's suicidal thoughts, ideation, or intent, including, but not limited to, the suicidal notes and letters which you reported to Wendy Beltz, L.P.N., that you had found in Marin's room.

RESPONSE TO REQUEST NUMBER TWO:

Objection, irrelevant for the reasons discussed in Ms. Casselli's deposition of August 27, 1997. Further, there were and are no notes or letters in existence.

REQUEST NUMBER THREE:

Please produce all of Marin's soiled or stained underwear which you reported to Wendy Beltz, L.P.N., that you had in your possession or subject to your control.

RESPONSE TO REQUEST NUMBER THREE:

Objection, irrelevant for the reasons discussed in Ms. Casselli's deposition of August 28, 1997. Further, that [sic] was and is no soiled or stained underwear of Marin's.

Respectfully submitted:

/s/ Leslie A. Bonin
LESLIE A. BONIN #14090
Attorney for Donna Madden Casselli
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 524-3306

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on all counsel to this proceeding by facsimile transmission, hand delivery, or by placing same in the United States mail, first class, postage prepaid, this 12th day of September, 1997.

/s/ Leslie A. Bonin

APPENDIX "K"
EXCERPTS FROM THE 15 SEPTEMBER 1997 DEPOSITION OF MRS. CASSELLI

Question (by Ms. Smith): Are you lucid today, Ms. Casselli?

Answer (by Mrs. Casselli): Yes, I'm lucid today.

Question: Are you able to distinguish truth from lies?

Answer: Yes.

* * *

Question: Have you read the – let me see it, please – Response To Request For Production Of Documents filed on your behalf by your attorney?

Answer: I read all of it.

Question: Is it true and correct to the best of your knowledge, information and belief?

Answer: Yes, it is. May I have some water first?

* * *

Question: It's true then, Ms. Casselli, there never was a tape in which Mr. Casselli allegedly discussed your minor daughter's nipples and

his or her masturbation?

Answer: That's true. What's – what you have there is correct.

Question: So when you told Nurse Beltz that such a tape existed, it was not true? That's correct?

Answer: I believed that it was true at the time, Ms. Smith.

Question: But it wasn't true, was it?

Answer: No, but at the time that's when I was sleep deprived. My meds was [sic] screwed up and it was my sincere belief that that did exist.

Question: You weren't sleep deprived on August 27th when you gave us your deposition, were you?

Answer: No. I was sleeping fine then.

Question: And your, I quote, meds weren't screwed up at that time either were they?

Answer: No.

Question: But again you told us that the tape existed, didn't you?

Answer: Yes.

Question: It didn't exist, did it?

Answer: No.

Question: You knew it didn't exist, didn't you?

Answer: Yes.

15 September 1997 deposition
of Donna Madden Casselli, pp. 6-8.

(On the subject of the soiled underwear, Mrs. Casselli testified as follows):

Question (by Ms. Smith): The underwear, that was what you were talking about when you reported it to Nurse Wendy, never existed, did it?

Answer (by Mrs. Casselli): No. I think I realized that when everything got balanced, too.

Question: So when I deposed on August 27th and you were not sleep deprived and not out of control under your meds, you did tell me that you saved those panties, didn't you?

Answer: Yes, because when all this happened, I really thought that was part of it.

Question: I don't understand, ma'am, what do you mean?

Answer: That's means [sic] at the end of November when I had my medicine screwed up I had been many, many months sleep deprived. I really believed it. Okay? I believed at that time that that existed. I also believed at that time my phone was bugged, but I wasn't rational then.

Question: Ma'am, we are not talking about November of '96. We are talking about August of 1997, and in August of 1997 you said in your deposition that you had saved the panties that you have just testified to as never existed; is that correct?

Answer: That's correct. I panicked again and I was afraid I'd get in trouble.

* * *

Question: Your answer about the panties in the deposition of August 27th, 1997 was not truthful, was it?

Answer: No, it was not.

Id. pp. 18-19.

(Regarding tapes of conversations between Mr. Casselli and Marin which Mrs. Casselli testified on 27 August 1997 that she had "monitored"):

Question (by Ms. Smith): On August 27th . . . in response to my questions, you testified that the tapes of conversations between Marin and her father were in your possession; isn't that correct?

Answer (by Mrs. Casselli): That's correct.

Question: Have you destroyed tapes between August 27th, 1997 and today?

Answer: No.

Question: They weren't in your possession on August 27th, 1997, were they?

Answer: No, they weren't.

Question: So your response was not truthful, was it?

Answer: It was not accurate. . . .

Id. pp. 21, 22.

APEPNDIX "L"

LOWE, STEIN, HOFFMAN, ALLWEISS & HAUVER, L.L.P.

ATTORNEYS AT LAW

ONE SHELL SQUARE

SUITE 3600

701 POYDRAS STREET

NEW ORLEANS, LOUISIANA 70139-3600

[Letterhead Names Omitted In Printing]

September 25, 1997

VIA MAIL AND FAX NO. 529-4179
Leslie A. Bonin, Esq.
700 Camp Street
New Orleans, Louisiana 70130

RE: Casselli v. Casselli
24th JDC, No. 450-346, Div. "A"
Our File No. 3387-93-327

Dear Leslie:

I am writing to confirm our conversations of yesterday and today.

We will continue by joint motion the trial from 8, 9 and 10 October. We will go to Court on the morning of 8 October for a status conference with the Court should either side wish to argue something to the Judge based on Dr. Janzen's report, and to pick new trial dates.

We agreed to postpone the depositions of Brenda Coleman and Dr. Joseph Roniger until after Dr. Janzen issues his report to avoid possibly having to redepose both of them.

We have both made it clear to Dr. Janzen that the trial is not continued in the hopes that he will issue his report Monday, which is the date Shelly, of his office, told me was the *earliest* we could anticipate his report.

I am in receipt of your Subpoenae Duces Tecum to Dr. Janzen and Dr. Baer. Please make sure you send me copies of their production in accordance with the Code of Civil Procedure.

With best wishes, I remain

Very truly yours,

/s/ Suzette Marie Smith
Suzette Marie Smith

SMS/db
cc: Robert C. Lowe, Esq.
Mr. Henry Casselli, Jr.

APPENDIX "M"

LOWE, STEIN, HOFFMAN, ALLWEISS & HAUVER, L.L.P.

ATTORNEYS AT LAW

ONE SHELL SQUARE

SUITE 3600

701 POYDRAS STREET

NEW ORLEANS, LOUISIANA 70139-3600

[Letterhead Names Omitted In Printing]

October 6, 1997

VIA MAIL AND FAX NO. 529-4179
Leslie A. Bonin, Esq.
700 Camp Street
New Orleans, Louisiana 70130

RE: Casselli v. Casselli
24th JDC, No. 450-346, Div. "A"
Our File No. 3387-93-327

Dear Leslie:

I am writing to confirm that our trial has been converted to a status conference at 9:00 a.m. on 8 October 1997. I have confirmed the status conference with Nora, Judge Rothschild's Civil Minute Clerk.

With best wishes, I remain

Very truly yours,

/s/ Suzette Marie Smith
Suzette Marie Smith

SMS/db
cc: Robert C. Lowe, Esq.
Mr. Henry Casselli, Jr.

APPENDIX "N"

LOWE, STEIN, HOFFMAN, ALLWEISS & HAUVER, L.L.P.

ATTORNEYS AT LAW

ONE SHELL SQUARE

SUITE 3600

701 POYDRAS STREET

NEW ORLEANS, LOUISIANA 70139-3600

[Letterhead Names Omitted In Printing]

October 6, 1997

VIA MAIL AND FAX NO. 529-4179
Leslie A. Bonin, Esq.
700 Camp Street
New Orleans, Louisiana 70130

RE: Casselli v. Casselli
24th JDC, No. 450-346, Div. "A"
Our File No. 3387-93-327

Dear Leslie:

Transmitted herewith please find proposed Joint Motion And Order To Continue and Motion For Rule For Contempt. Please mark any changes which you may wish on the Joint Motion And Order To Continue and fax it back to me. I will bring it to Court for the status conference on 8 October 1997 at 9:00 a.m.

With best wishes, I remain

Very truly yours,

/s/ Suzette Marie Smith
Suzette Marie Smith

SMS/db
Enclosure

cc: Robert C. Lowe, Esq.
Mr. Henry Casselli, Jr.

APPENDIX "O"

24TH JUDICIAL DISTRICT COURT FOR THE
PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 450-346 DIVISION "A"

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

FILED: November 7, 1997 /s/ Nora B. Romano
DEPUTY CLERK

INTERIM ORDER

This matter came for a status conference on October 8, 1997.

Present were:

Leslie A. Bonin, attorney for plaintiff, Donna M. Casselli; and Robert C. Lowe and Suzette M. Smith, attorney for defendant, Henry Casselli, Jr.

Following a status conference with the attorneys and a review of Dr. William Janzen's custody report:

IT IS ORDERED that Henry Casselli, Jr. shall have **interim sole custody** of the minor child, Marin Casselli, pursuant to the recommendations of Dr. William Janzen contained in his most recent custody evaluation report.

IT IS FURTHER ORDERED that Donna Madden Casselli shall have **interim visitation** with the minor child, Marin, every other weekend, beginning after school

on Thursday and ending just before school starts on Monday mornings. The interim visitation shall commence on Thursday, October 9, 1997.

IT IS FURTHER ORDERED that Major Holidays shall be worked out among and between the parties. Until the parties implement a schedule for major holidays, such holidays shall be **alternated** on an interim basis. The parties may call a status to resolve any conflicts regarding visitation or custody.

IT IS FURTHER ORDERED that this Interim Order is entered without prejudice to the rights of either party and specifically without giving rise to any presumption in favor of either party.

Thus done and signed in Gretna, Louisiana this 7 day of November , 1997.

/s/ Walter J. Rothschild
JUDGE

APPENDIX "P"

EXHIBIT "H"

Application For Writs

No. '97-C-1127

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

NOV 12 1997

/s/ Illegible
Clerk

DONNA MADDEN, WIFE OF HENRY CASSELLI, JR.

VERSUS

HENRY CASSELLI, JR.

IN RE DONNA MADDEN CASSELLI

APPLYING FOR SUPERVISORY WRITS OF REVIEW, CERTIORARI AND MANDAMUS DIRECTED TO THE HONORABLE WALTER J. ROTHSCHILD, JUDGE, DIVISION "A", TWENTY-FOURTH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA, NUMBER 450-346

Attorneys for Relator:

Ms. Leslie A. Bonin
Attorney at Law
700 Camp Street
New Orleans, LA 70130
(504) 524-3306

A TRUE COPY

GRETNA DEC 16 1997 19__

/s/ Illegible CLERK
COURT OF APPEAL,
FIFTH CIRCUIT

Attorneys for Respondent:

Mr. Robert C. Lowe
Ms. Suzette M. Smith
Attorney at Law
701 Poydras Street
Suite 3600 One Shell Square
New Orleans, LA 70139
(504) 581-2450

DECEMBER 16, 1997

PETITION FOR WRITS DENIED
REMANDED WITH
INSTRUCTIONS

Considering the volatile background of this case, we cannot say that the trial judge erred in issuing the November 7, 1997 interim order. What is of concern of this Court, however, is the fact that the hearing (trial) has been pending for months and is not scheduled to be heard until April 22-24, 1998. Matters of this type should be heard as expeditiously as possible. Accordingly, we remand to the trial judge for him to set a trial date earlier than April 22-24, 1998.

/s/ CG
JUDGE H. CHARLES GAUDIN

/s/ FB
JUDGE FRED S. BOWES

/s/ CG
JUDGE CHARLES GRISBAUM, JR.

APPENDIX "Q"

(SEAL)

OFFICE OF DISTRICT JUDGES
24TH JUDICIAL DISTRICT
PARISH OF JEFFERSON
GRETNA, LOUISIANA

JUDGES

WALTER J. ROTHSCHILD, DIVISION A
FREDERICKA H. WICKER, DIVISION B
ALAN J. GREEN, DIVISION C
ROBERT M. MURPHY, DIVISION D
CLARENCE E. McMANUS, DIVISION E
PATRICK J. McCABE, DIVISION F
ROBERT A. PITRE, JR., DIVISION G
KERNAN A. HAND, DIVISION H
JO ELLEN GRANT, DIVISION I
SHELDON G. FERNANDEZ, DIVISION J
MARTHA E. SASSONE, DIVISION K
CHARLES V. CUSIMANO, II, DIVISION L
HENRY G. SULLIVAN, JR., DIVISION M
SUSAN M. CHEHARDY, DIVISION N
MARION F. EDWARDS, DIVISION O
MELVIN C. ZENO, DIVISION P

January 21, 1998

Leslie A. Bonin
700 Camp St.
New Orleans, LA 70130

Re: Casselli v. Casselli
No. 450-346"A"

Dear Leslie:

This letter will serve to confirm our conversation on January 16, 1998 in which you requested that the trial date of April 22-24, 1998 be maintained so that discovery could be completed – the 5th Circuit's concerns notwithstanding. Therefore, since neither you nor your opponent, who has also been contacted, want an earlier date, the date in April will be maintained and the 5th Circuit notified to voice their opinion if necessary.

Sincerely yours,

/s/ M. D. Ready
M. Davis Ready
Law Clerk to the Honorable
Walter J. Rothschild

cc: Suzette Smith
5th Circuit Court of Appeals

APPENDIX "R"

BOARD CERTIFIED
FAMILY
LAW SPECIALIST

LESLIE A. BONIN
ATTORNEY AT LAW
700 CAMP STREET
NEW ORLEANS, LOUISIANA 70130
TELEPHONE: (504) 524-3306
TELECOPIER: (504) 529-4179

February 11, 1998

Mr. M. Davis Ready
Law Clerk to the Honorable Walter J. Rothschild
Judge, Division "A"
24th Judicial District Court
200 Derbigny Street
Jefferson, LA 70053

RE: Casselli v. Casselli, No.: 450-346, Fifth Circuit No. 97-C-1127

Dear Davis:

Although we are grateful for the concern the Fifth Circuit Court of Appeal has extended in requiring Judge Rothschild to entertain an earlier trial date, our complaint was not that the custody trial date was set too far into the future, but rather, that an Interim Order was entered without a hearing.

Moving up the custody trial date would deprive us of the time we need to properly prepare for a trial that will determine and set custody and is not, we believe, an appropriate remedy for an Interim Order that has been entered without a hearing.

Because an earlier trial date would deprive us of the time we need to complete discovery and properly prepare

for trial, we request that the current trial date of April 22-24, 1998, be maintained.

I wish to thank you for this and previous courtesies of your office. With kindest regards, I remain,

Very truly yours,

/s/ Leslie
LESLIE A. BONIN

LAB/bab
Cc: Suzette M. Smith
Fifth Circuit Court of Appeal

APPENDIX "S"

The Supreme Court of the State of Louisiana

DONNA MADDEN, WIFE OF HENRY CASSELLI, JR. **NO. 98-CC-0126**

VS.

HENRY CASSELLI, JR.

IN RE: Madden, Donna; Casselli, Donna Madden; – Plaintiff(s); Applying for Supervisory and/or Remedial Writs; Parish of Jefferson 24th Judicial District Court Div. "A" Number 450-346; to the Court of Appeal, Fifth Circuit, Number 97-CW-1127

February 6, 1998

Denied.

PFC

WFM

HTL

CDK

BJJ

JPV

CDT

KNOLL, J. not on panel.

Supreme Court of Louisiana
February 6, 1998

/s/ Illegible
Clerk of Court
For the Court

Supreme Court, U.S.
FILED
MAR 25 1998
CLERK

NO. 97-1319

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

DONNA MADDEN, WIFE OF
HENRY CASSELLI, JR.
Petitioner

versus

HENRY CASSELLI, JR.
Respondent

On Petition for Writ of Certiorari
To the 24th Judicial District Court
For the Parish of Jefferson, State of Louisiana,
The Honorable Walter J. Rothschild, Judge

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Leslie A. Bonin
700 Camp Street
New Orleans, LA 70130
(504) 524-3306

Counsel for Petitioner,
Donna Madden Casselli

12 pp

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This Honorable Court has Jurisdiction to Review the Judgment at Issue as Specifically Provided by 28 U.S.C. § 1257

The Trial Court Improperly Rendered its Interim Order

Ms. Casselli was Denied Due Process

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ARGUMENT

MAY IT PLEASE THE COURT:

Mr. Casselli has not only grossly misrepresented the law to this Honorable Court, but has presented allegations as facts in direct contravention of Rule 11 of the Federal Rules of Civil Procedure and he should be sanctioned.

Mr. Casselli's entire argument is grounded primarily upon one presumed premise that is patently flawed, specifically, that it is in Marin's best interest that her father be awarded sole custody on an interim basis without a hearing. This argument ignores the very specific due process requirements of the United States Constitution.

Contrary to what Mr. Casselli would have this Honorable Court believe, Ms. Casselli respectfully declined the Fifth Circuit Court of Appeal's offer to advance the trial date herein because it sidestepped the real issue Ms. Casselli presented, the denial of her due process right to a hearing **before** being stripped of custody. An earlier trial date would have simply imposed yet another injustice, this time on both sides, as neither side has completed discovery or trial preparation. [Respondent's Opposition, p. 14, 1st Par.]. Although Ms. Casselli is grateful for the concern the Fifth Circuit Court of Appeal extended to her in its Writ Denial, an earlier trial

date would not remedy the denial of her due process right by the Trial Court in rendering its Interim Order.

THE ALLEGATIONS MR. CASSELLI PRESENTS TO THIS HONORABLE COURT AS FACTS ARE IRRELEVANT TO THE ISSUE OF THE DENIAL OF DUE PROCESS TO MS. CASSELLI AND INTERPOSED FOR AN IMPROPER PURPOSE

Ms. Casselli could easily fill ten pages with allegations about Mr. Casselli that would inflame and prejudice this Honorable Court against him in response to the five pages of allegations concerning Ms. Casselli that Mr. Casselli included solely to inflame and prejudice this Honorable Court.

However, the Trial Court did not reach its decision based upon any of Mr. Casselli's allegations because there was no hearing. The Trial Court based its decision solely upon the written recommendation of Dr. Janzen, which Ms. Casselli objected to and was specifically denied the opportunity to refute in direct contravention of Louisiana law and her Constitutional right to due process.

Indeed, if the situation were as horrible as Mr. Casselli presents to this Honorable Court, there is no doubt he would have availed himself of the provisions of Article 3945 of the Louisiana Code of Civil Procedure and applied for an emergency order of temporary custody. Mr. Casselli has never applied for an emergency order of temporary custody

simply because the facts of this case would not support this extraordinary relief.

This Honorable Court should sanction Mr. Casselli for his blatant attempt to obscure the fundamental legal issue of this case with histrionic allegations in direct contravention of Rule 11 of the Federal Rules of Civil Procedure which provides in part that

> [b]y presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief . . . it is not being presented for any improper purpose . . . .

Fed. R. Civ. P. 11 (West 1997).

THIS HONORABLE COURT HAS JURISDICTION TO REVIEW THE JUDGMENT AT ISSUE AS SPECIFICALLY PROVIDED BY 28 U.S.C. § 1257

Mr. Casselli erroneously proposes that this Honorable Court does not have jurisdiction because this Honorable Supreme Court has held that

> [t]he final judgments rule **precludes review** "where anything further remains to be determined by a State court." *Radio Station WOW v. Johnson*, 326 U.S. 120, 124, 65 S. Ct. 1475, 89 L. Ed. 569 (1945); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975).

[Respondent's Opposition, p. 10 (emphasis added)]. Mr. Casselli's quote is entirely out of context and no such final judgements rule appears in the text of either of the cases he cites.

Instead, this Honorable Court has held:

> . . . [T]he Court has recurringly encountered situations in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come. **There are now at least four categories of such cases in which the Court has treated the decision on the federal issue as a final judgment for the purposes of 28 U.S.C. s 1257 and has taken jurisdiction without awaiting the completion of the additional proceedings anticipated in the lower state courts.** In most, if not all, of the cases in these categories, these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date, and immediate rather than delayed review would be the best way to avoid 'the mischief of economic waste and delayed justice.'

COX Broadcasting Corp. v. Cohn, 420 U.S. 469, 477-78, 95 S. Ct. 1029, 1037, 43 L. Ed.2d 328 (1975) (quoting in part Radio Station WOW v. Johnson, 326 U.S. 120, 65 S. Ct. 1475, 89 L. Ed. 569 (1945) (emphasis added)).

This Honorable Court has jurisdiction to review the

Interim Order of Trial Court under Section 1257 of Title 28 of the United States Code because Ms. Casselli has claimed a right under the United States Constitution and the Supreme Court of Louisiana, the State's highest court, has denied Ms. Casselli's Application for Supervisory Writs of Review, Certiorari, and Mandamus. Ms. Casselli's argument relies solely upon her right to due process of law under the United States Constitution and nothing further remains to be determined by a State court with respect to the Interim Order at issue.

This Honorable Court should sanction Mr. Casselli for his advocation of a legal position not warranted by existing law in direct contravention of Rule 11 of the Federal Rules of Civil Procedure which provides in part that

> [b]y presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief . . . the claims, defenses, and other legal contentions therein are warranted by existing law . . . .

Fed. R. Civ. P. 11 (West 1997).

THE TRIAL COURT IMPROPERLY RENDERED ITS INTERIM ORDER

The Interim Order at issue herein was rendered in response to Mr. Casselli's oral motion in the Judge's cham-

bers and not in open court. Ms. Casselli was denied any opportunity to contest this Interim Order. The Trial Court specifically denied Ms. Casselli's request for a hearing.

Mr. Casselli provided this quote from Black's Law Dictionary:

> A judicial proceeding, order, injunction, et cetera, is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, **or contestation by**, any person adversely interested.

Black's Law Dictionary (Emphasis Added). Ms. Casselli was specifically denied her right to contest this Interim Order.

Article 963 of the Louisiana Civil Code of Procedure which is entitled "**Ex Parte and Contradictory Motions**" states that if an order applied for by motion is

> one to which the mover is clearly entitled without supporting proof, the court may grant the order ex parte and without hearing the adverse party.

La. Code Civ. Proc. Art. 963 (West 1998). Thus, an order is ex parte if it is issued without hearing the adverse party. Because Ms. Casselli was denied a hearing before the issuance of the Interim Order, the Interim Order was ex parte under Louisiana law.

Additionally, the same Article states that if an order applied for by motion is

> one to which the mover is not clearly entitled, or which requires supporting proof, the motion **shall** be served on contradictorily with the adverse party.

La. Code Civ. Proc. Art. 963 (West 1998) (emphasis added).

Any change in custody in Louisiana requires proof by clear and convincing evidence that such an award is in the best interest of the child. Mr. Casselli's oral motion was one which required proof by clear and convincing evidence and therefore cannot be issued ex parte under Louisiana law. La. Civ. Code Art. 132 (West 1998); La. Code Civ. Proc. Art. 963.

MS. CASSELLI WAS DENIED DUE PROCESS

Marin's best interest and her parents fundamental right to due process of law are not mutually exclusive legal principles.

The fundamental right to due process of law is so critical to a determination of the best interest of a child that the Louisiana Legislature has seen fit to carefully and specifically carve only two exceptions to the this fundamental right to a hearing, Article 3945 of the Louisiana Code of Civil Procedure and The Domestic Abuse Act beginning with Section 2131 of Title 46 of the Louisiana Revised Statutes. These exceptions allow a court to render an ex parte custody

order only in extraordinary circumstances, when that order must be rendered to protect the safety of a child. A hearing must be had within 15 days to insure the best interest of the child are served by the parents fundamental right to due process of law.

Mr. Casselli would have this Honorable Court determine that the best interest of the child and her parents fundamental right to due process of law are mutually exclusive. Mr. Casselli goes so far as to suggest that a parents desire to exercise his or her fundamental right to due process of law is not in the best interest of a minor child. Yet without affording parents the fundamental right of due process of law, how is a court to determine a child's best interest, a determination of the utmost importance.

Mr. Casselli suggests to this Honorable Court that the untried opinion of a mental health professional and mere allegations suffice to strip a parent of custody, and to even question this determination is proof that a parent does not have a child's best interest at heart. Mr. Casselli then argues that all of this does not really matter because this order is only temporary, ignoring that Louisiana law provides that an order of temporary custody issued without a hearing lasts a maximum of 15 days, not five months.

Mr. Casselli proposes to this Honorable Court that it is wrong to grant Ms. Casselli a hearing before stripping her

of the joint custody of her daughter and that it is in Marin's best interest that her mother not be heard for at least five months.

Mr. Casselli proposes that a mental health professional who did not even bother to ascertain information concerning Ms. Casselli's mental health for the past year and who rendered such an inconsistent opinion (sole custody to Mr. Casselli during the school year, shared custody during the Summer; the parties cannot work together, yet the parties must work out their holiday schedule) alone and unquestioned should make this determination.

The fundamental right to due process of law is designed to protect the best interest of a child by ensuring that a determination of custody in excess of fifteen days is not made in this offhand manner. The powers of a trial court, though vast, particularly regarding the best interest of a child are never greater than the law itself and the inherent protections of that child's best interest.

Respectfully Submitted,

LESLIE A. BONIN
700 Camp Street
New Orleans, LA 70130
(504) 524-3306

Counsel for Petitioner,
Donna Madden Casselli